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Ontario
Human Rights
Commission

Annual Report of the

Government
Publications

Ontario Human Rights Commission



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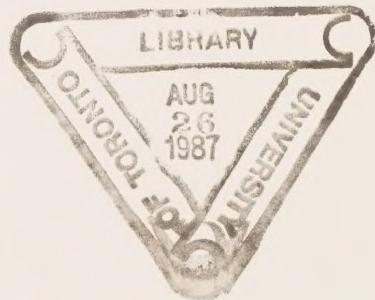
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Honourable Robert G. Elgie, M.D.
Minister of Labour



Dorothea Crittenden
Chairman



Ontario Human Rights Commissioners 1978-79

Dorothea Crittenden, <i>Chairman</i> Toronto	Peter Cicchi (appointed September 13, 1978) Hamilton
Rabbi Gunther Plaut, <i>Vice-Chairman</i> Toronto	Brian Giroux Kapuskasing
Bromley Armstrong Toronto	Canon Borden Purcell Ottawa
Judge Rosalie Abella Toronto	Dr. Bhausaheb Ubale Toronto
Elsie Chilton (term expired February 18, 1979) Moose Factory	Executive Director George A. Brown Legal Counsel John I. Laskin



Chairman's Remarks

I am pleased to present the annual report of the Ontario Human Rights Commission for the fiscal year 1978-79. Since the Ontario Human Rights Code was enacted in 1962, we have taken many significant strides toward preventing and reducing prejudice and discrimination in Ontario. It is my hope that this report will outline some of the excellent work that we have been doing and that it will encourage the people of Ontario to play their part in creating a society based on the principles of human rights. This report includes an historical review of the role and functions of the commission since its inception in 1962, a review of commission programs and activities, an analysis of boards of inquiry, complaints of discrimination and community, race and ethnic relations and public education projects.

It is especially gratifying that this report coincides with the 30th Anniversary of the Universal Declaration of Human Rights which was celebrated on December 10, 1978. This declaration, as proclaimed by the United Nations, recognizes the inherent dignity and equal and inalienable rights of all members of the human family. In accordance with this declaration, it is public policy in Ontario that every person is free and equal in dignity and rights without regard to race, creed, colour, age, sex, marital status, nationality, ancestry and place of origin.

We are fortunate to have in Ontario a diversity of people, each making a rich contribution to the development and well-being of our province. All residents of Ontario are protected from discrimination in employment, housing and access to public accommodation, services and facilities under the Ontario Human Rights Code. The challenge for our

commission is not only to administer and enforce the code, but to build a climate of understanding and mutual respect in which all our people experience equality of opportunity and can interact in harmony with one another.

This was a year of change and accomplishment, but the work remaining in the area of human rights is tremendous. While respect for human rights is an old tradition in Ontario, it is more fragile than we may wish to believe. A society of equality and social justice will not grow on its own initiative; it requires constant nurturing through legislative action, enforcement, public education and public will.

Ontario has a long history of human rights legislation and it must continue to grow and strengthen in order to meet the changing human rights needs and issues. The answer does not lie solely with human rights legislation, however, but within the hearts and minds of every Ontario resident to make that law work. It is only through the concern, cooperation and goodwill of individuals and institutions that a climate of harmony among all people can be achieved.



Dorothea Crittenden

Introduction

The Ontario Human Rights Code reflects the public policy of Ontario, and thus embodies the moral sense or conscience of the community that discrimination violates the principle of every person being free and equal in dignity and rights.

The blatant and overt discrimination of years past has been partly replaced by the systemic discrimination through which minorities and women are denied educational and employment opportunities. For many groups, the arbitrary and invidious discrimination of the past has rendered them uncompetitive in today's economy. Because the scope of this discrimination encompasses education at all levels, community resources, and recruitment and hiring, the mandate of human rights agencies has had to increase significantly to attempt to remedy and eliminate the effects of past practices and prejudices.

This report is a comprehensive review of the programs and activities which were conducted by the Ontario Human Rights Commission during the fiscal year 1978-79. For the first time since the code was enacted in 1962, the commission, through its chairman, Dorothea Crittenden, is submitting its own annual report to the Ontario Legislature.

This report will provide a brief history of the origin and development of human rights legislation in Ontario, and a detailed statistical and analytical discussion of the administration and enforcement of the code during the past fiscal year. It is intended to inform the reader about the current patterns and trends of discrimination and prejudice which the code was designed to address.

The purpose and role of the Ontario Human Rights Code

The principles which underlie the Ontario Human Rights Code are expressed in its preamble, which states:

WHEREAS recognition of the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world and is in accord with the Universal Declaration of Human Rights as proclaimed by the United Nations;

AND WHEREAS it is public policy in Ontario that every person is free and equal in dignity and rights without regard to race, creed, colour, sex, marital status, nationality, ancestry or place of origin.

These principles are expressed in federal and other provincial statutes as well, including the Canadian Bill of Rights; and in international laws to which Canada has subscribed, including the Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations Convention on the Elimination of All Forms of Racial Discrimination, and the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights. The Canadian Human Rights Act was enacted in 1978, and all Canadian provinces and territories now have anti-discrimination statutes applying to all persons within their jurisdiction.

It is the responsibility of the Ontario Human Rights Commission to administer and enforce the code. The effective application of its provisions requires the commission to keep pace with the ever-changing patterns of discrimination, and the emergent needs of the groups who are protected by the statute.

The Universal Declaration of Human Rights, which was adopted by the General Assembly of the United Nations in 1948, defines "discrimination" to include:

"Any distinction, exclusion or preference made on the basis of race, colour, sex, religion, or... national extraction which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation;..."

"Human rights" has come to mean the assurance of the dignity and the uniqueness of individuals against the arbitrary, irrelevant and illegitimate denial of certain privileges on the basis of a physical or cultural characteristic possessed by the group as a whole. To exclude a person, not because of his or her individual characteristics but because of a collective identity which is presumed to provide an accurate assessment of the characteristics of everyone who shares that identity, is a denial of human rights.

Human rights legislation today is less concerned with the specific and blatant abuse that was so characteristic of an earlier era, an era in which legislatures interfered as little as possible with the fundamental traditions of society. The code is more concerned today with broad and complex categories of behaviour, and requires a fair, large, and liberal interpretation as will best ensure the attainment of the objectives of the statute.

The application of the code, therefore, is not limited to overt and deliberate discrimination. The statute must also be used to address practices that are fair or neutral on their face, but are discriminatory in their impact. If a practice which operates to exclude

women or minorities cannot be shown to be related to reasonable standards of business necessity or job performance, the practice is prohibited. Good intent, or an absence of discriminatory intent, does not redeem employment or business practices that operate as built-in headwinds for minorities or women, and are not related to an assessment of the individual's merit or performance. In brief, legislatures have directed the thrust of anti-discrimination statutes to the consequences of employment or business practices, not simply the motivation behind them.

A related trend is an increase in the number and complexity of multiple complaints as responses to institutionalized discriminatory practices affecting large segments of the workforce, and to a greater awareness of the impact of economic imperatives and collective demands for redress of grievances.

The effective administration of the code has also required the commission to address a number of recent trends which have become evident, affecting the relations among the groups in Ontario society. These trends have reinforced the barriers to equality of opportunity that prevail in all areas of social and economic life.

High unemployment, inflation and housing shortages in recent years have contributed to a hardening of attitudes among persons who are in competition for employment, education and training, housing and community services and facilities.

Increases in the aspirations and expectations of minorities and women have resulted in a proliferation of pressure groups and greater demands for protection under the code from community leaders, politicians and agencies. Access to equal opportunity for women in employment, housing, services and facilities is a more frequent demand as society has come to recognize the social and economic benefits attendant upon the changing roles of the sexes, and the increasing participation of women in community, employment and educational institutions.

The composition of Ontario's population has seen many changes since the liberalization of the Immigration Act in 1967. The potential for racial and ethnic conflict has increased because of immigration from Third World countries, as longer-term members of the host community have come to fear that the customs and values of newcomers are displacing or undermining their material and social well-being. The

task of educating both host and immigrant groups in their rights and obligations under the code has become increasingly important during the adjustment period.

At the same time, minorities and women have become more aware of their rights under the code. They are less willing to accept discriminatory treatment and inadequate remedies.

In the regions outside Ontario's urban centres, the great distances separating communities, and the cultural and linguistic differences, operate as barriers to program effectiveness. Particularly in the north, continuing discrimination has created in Native communities a distrust of government agencies and a view of corrective legislation as inadequate.

The code was not intended to be primarily a penal statute. Rather, it is governed by the view that the actions of prejudiced people and their attitudes can be changed and influenced by a process of re-education, discussion and the presentation of facts to challenge popular myths and stereotypes about individuals and groups. Human rights is a skillful blending of education and legal techniques in the pursuit of social justice. The central aim of conciliation is amicable resolution rather than retribution. A resolution worked out in good faith by the parties to a complaint or a dispute is a necessary first step in any type of attitudinal change.

One noted legal authority on Canadian human rights has written:

"Human rights legislation is a recognition that it is not only bigots who discriminate, but fine 'upright, gentlemanly' members of society as well. It is not so much out of hatred as out of discomfort or inconvenience, or out of the fear of loss of business, that most people should be given an opportunity to reassess their attitudes, and to reform themselves, after being given the opportunity of seeing how much more severe is the injury to the dignity and economic well-being of others, than their own loss of comfort or convenience. However, if persuasion and conciliation fails, then the law must be upheld, and the law requires equality of access and equality of opportunity."

When conciliation fails, the code provides for the appointment of a board of inquiry. Decisions of boards of inquiry are the commission's most important instruments in the development of jurisprudence. In those cases involving precedent-setting issues of statute interpretation, the board of inquiry decision assists the commission and staff in the identification of

jurisdiction, the investigation and conciliation of complaints, and the development of policy. This is especially critical when enforcing and recommending amendments to a statute which must keep pace with changing patterns and trends in discrimination.

For the parties to the complaint, the board of inquiry provides a public forum to determine whether or not the act of discrimination did occur. While attitudinal change is best accomplished by conciliation and private discussion, public hearings serve to reinforce the principle that an act of discrimination does not give rise merely to a new private claim for compensation – it amounts to a public wrong.

Indeed, there has been a significant increase in the number of boards of inquiry in the past two years, as people have sought to have their complaints heard and decided in a public forum, because of a growing awareness that discriminatory conduct is unfair and unacceptable.

Human rights legislation has traditionally emphasized conciliation and settlement. Respect for human dignity cannot easily be enforced by penal sanctions, although such sanctions must be available as a last resort. The relative infrequency of resort to boards of inquiry or prosecution would suggest that conciliation is highly successful: nearly 90 per cent of complaints are resolved in informal negotiations among the parties.

The history of human rights legislation in Ontario

The first human rights statute of the contemporary era was the Ontario Racial Discrimination Act of 1944 which prohibited publication, display or broadcast of anything indicating an intention to discriminate on the basis of "... race or creed". The Act was designed to combat the once-prevalent "Whites only" and "No Jews allowed" signs which were prominently displayed in shop windows, amusement arcades, beaches and other places of public resort. Although such signs have largely disappeared, the legislative proscription remains; a section based on the 1944 Act will be found in most Canadian human rights legislation.

The 1944 Racial Discrimination Act was an important pioneering statute because, for the first time, a legislature had explicitly declared that racial and religious discrimination was antithetical to public policy and, from that time on, the judiciary could not simply subordinate human rights to commerce, contract or property. Its influence was confirmed in 1945 when Mr. Justice MacKay of the Ontario High Court cited the Ontario statute in striking down a racially discriminatory property covenant purporting to prohibit

sale of land to "... Jews or persons of objectionable nationality". Since then, the courts have generally demonstrated greater understanding of the pervasive and invidious consequences of racial discrimination and, obversely, the corresponding importance of legislation attempting to secure human rights.

In 1950, the Ontario Labour Relations Act was amended to ban discriminatory clauses in collective agreements, and the Conveyancing and Law of Property Act declared restrictive covenants in the sale of land to be null and void.

In 1951, Ontario enacted the first Fair Employment Practices Act and the Female Employees Fair Remuneration Act. Three years later, a Fair Accommodation Practices Act was passed. Other provinces soon followed Ontario's lead, and this legislation became the prototype of contemporary human rights codes.

The principal defect of the early fair employment and accommodation legislation was the lack of full-time staff to administer and enforce it. While it was clearly an improvement upon the cruder quasi-criminal legislation (such as the Saskatchewan Bill of Rights and the Ontario Racial Discrimination Act) it still continued, as one dean of law has pointed out:

"...to place the whole emphasis of promoting human rights upon the individual who has suffered most, and who is therefore in the least advantageous position to help himself. It places the administrative machinery of the state at the disposal of the victim of discrimination, but it approaches the whole problem as if it was wholly his problem and his responsibility. The result is that very few complaints were made, and little enforcement was achieved."

In 1958, the Ontario Anti-Discrimination Commission Act was passed. The commission had three functions: to advise the Minister of Labour in regard to the administration of the 1951 Acts and the 1954 Act; to recommend to the minister ways to improve the three Acts; and to undertake an educational program to familiarize the public with the provisions of the three Acts.

Once again, in 1962, it was Ontario which took the initiative of consolidating various anti-discrimination provisions into a comprehensive human rights code and providing full-time staff to administer it. A commission was created, charged with the duty "...to promote an understanding of, acceptance of and compliance with this Act", ultimately responsible to a minister of the crown, but fully independent in the day-to-day performance of its functions. Other

provinces and the federal jurisdiction soon consolidated their anti-discrimination legislation and appointed human rights commissions to administer it.

The pioneering Ontario Human Rights Code prohibited discrimination on grounds of race, creed, colour, nationality, ancestry or place of origin in signs and notices, public accommodation, services and facilities, housing with more than six self-contained dwelling units, employment, and trade union membership.

In 1966, the Age Discrimination Act was enacted. It was followed by the Women's Equal Opportunity Act in 1970. In 1972, the code was further amended to include the provisions of these Acts.

Since 1962, the code has been amended 17 times, in the following areas:

Employment

The Age Discrimination Act was enacted to prohibit discrimination between the ages of 40 and 65, since an increasing proportion of the active labour force was in this age range and facing discrimination because of technological and organizational changes together with employer preference for younger workers.

In 1967, the exemption for employers with fewer than five employees was eliminated, because the former provisions exempted 76 per cent of service industries, 35 per cent of manufacturing, and 75 per cent of retailers.

In 1968, discriminatory advertising with respect to age was prohibited, because of an increasing tendency to discriminatory specification for younger workers in print advertising and by employment agencies. Also, the "Equal Pay-Equal Work" section of the code was repealed and re-enacted as section 19 of the Employment Standards Act.

In 1969, the section exempting an exclusively non-profit religious, philanthropic, educational, fraternal or social organization was amended to include any case where race, creed, colour, nationality, ancestry or place of origin was a reasonable occupational qualification. This was intended to ensure that exemptions were allowable only where hiring persons of a certain nationality, creed or colour was necessary to the special functions or services of the organization.

In 1972, discrimination on the basis of marital status was prohibited to address increasing discrimination particularly against married, separated and divorced women.

Also in 1972, section 6(a) of the code was added to provide for special employment programs (affirmative action) in response to the impact on minorities and women of disadvantage and inequality of employment opportunities. Membership in self-governing professions was also included to address the difficulties experienced by professionals who are trained abroad in gaining Ontario licences and other credentials.

Housing and Commercial Space

In 1965, the code was amended to cover apartments in any building containing more than three self-contained dwelling units, from the former six. In 1967, all self-contained dwelling units were covered, to avoid sanctioning legislative discrimination by mathematical formula.

In 1965, the code was expanded to provide protection for business people by prohibiting discrimination in the occupancy of commercial space.

In 1972, prohibition of discrimination on the basis of sex was extended beyond employment to housing, because more and more women were experiencing discrimination in housing occupancy. Also, the housing provisions were enlarged from "self-contained dwelling units" to cover any housing accommodation except where the owner or his family occupies part of the premises and shares a bathroom or kitchen with tenants.

Public Services and Facilities

In 1972, sex or marital status discrimination in public accommodation, services and facilities was prohibited to address increasing restrictions on women in gaining access to these services and facilities.

Discriminatory Signs and Notices

In 1972, discrimination on the basis of sex and marital status was prohibited in the display of discriminatory signs and notices.

Reprisals

In 1968, section 5 was added to protect all victims or witnesses of discrimination from the fear of retaliation for reporting alleged contravention of the Act. From past experience the commission had learned that fear of reprisal, whether well-founded or not, was often a potent deterrent to prospective complainants and witnesses. Complainants are particularly susceptible to thinly veiled threats of dismissal, or more subtle forms of coercion or differential treatment from respondents.

Jurisdiction

In 1965, the code was extended to cover the Government of Ontario and all crown agencies, and in 1969, the Age Discrimination Act was amended to bind the crown. This was a response to an increasing number of allegations of employment discrimination by crown employees.

Complaint Procedures

In 1972, the procedure of lodging a complaint was expanded so that a person other than the victim of an alleged discriminatory act could file a complaint, as could the commission itself. This was intended to bring the commission into line with other statutory human rights agencies and to reach discrimination where a victim is reluctant to file a complaint. Also, an appeal procedure from a report of a board of inquiry was provided to the Supreme Court of Ontario.

Penalties

In 1968, the maximum fine provided for contravention of the Act was raised from \$100 to \$500 for an individual and from \$500 to \$2,000 for a corporation and trade union. In 1972, maximum fines for non-compliance increased from \$500 to \$1,000 for individuals and from \$1,000 to \$5,000 for organizations. These measures were intended to ensure public awareness of the seriousness of infractions of the code and were designed to provide a deterrent to violations. For complainants and respondents, these changes provided assurance that acts of non-compliance merited more than token penalties.

Role of the Ontario Human Rights Commission

On a monthly basis, the full commission reviews the formal complaints of discrimination, filed under the commission's jurisdiction, in which the parties have not reached an agreement in conciliation. The commissioners recommend to the Minister of Labour whether these cases warrant the appointment of a board of inquiry or whether they should be dismissed. Policy matters are discussed and decided at the commission meetings.

Commissioners also grant or deny requests for exemptions from the provisions of the code. For example, exemptions have been granted for the hiring

of workers in group homes in order that a reasonable balance of male and female role models can be employed as leaders in the group home setting.

The commissioners discuss significant human rights issues and conflicts and determine appropriate avenues of action. They also approve affirmative action programs, to enable qualified or high potential members of minority groups and women to enter the work force in jobs where they have traditionally been excluded.

An important development has been the close working relationship with the recently established Canadian Human Rights Commission. In addition to this, the commission is involved in close contact with other provincial human rights agencies and international human rights organizations. Members also hold consultations with representatives of human rights commissions in the United States and overseas, to continue an information exchange and to discuss current issues. Representatives of the commission participated in the annual conferences of the Canadian Association of Statutory Human Rights Agencies and the International Association of Official Human Rights Agencies. The commission continues to expand its liaison network with business, industry, labour, governments, the media, law enforcement agencies, social agencies, professional associations, education officials, religious institutions, community and minority organizations and women's groups.

The commissioners are experienced and respected men and women who are drawn from various sections of our society. They reflect the diversity of Ontario's society including geographic, racial, ethnic and religious backgrounds. They are cognizant of and sensitive to the basic issue of human rights and they are committed to furthering the principle of equality of opportunity. Through their involvement with a large number of community groups, they can understand the province's human rights needs and issues upon which to formulate programs and policies designed to prevent

and reduce such problems. Their position in the community helps them to implement and gain widespread acceptance of human rights policies and programs.

The office of the chairman serves as a secretariat for the chairman and commissioners. It assists in researching, coordinating and implementing commission policy and liaison activities.

Committee on Race and Ethnic Relations and Public Education

The vice-chairman of the commission, Rabbi Gunther Plaut, chairs a special Committee on Race and Ethnic Relations and Public Education, which consists of all commission members. This committee analyzes the changing needs and issues in all aspects of race and ethnic relations with community implications. The committee takes appropriate action to prevent and reduce tension and conflicts and it actively designs public education programs in the area of human rights and race relations directed at police, industry, labour, schools, churches and the media. The committee takes policy decisions in the community relations area and it acts as a cutting edge for the implementation of programs by the community, race and ethnic relations staff.

Each committee member has the responsibility of developing a liaison with an important sector of society. The commissioners have the following liaison responsibilities:

- Ms. Crittenden*
 - intragovernmental affairs
- Rabbi Plaut*
 - media
- Bromley Armstrong*
 - police – minority relations
 - labour – management relations
- Brian Giroux*
 - education
- Canon Purcell*
 - religious institutions
- Dr. Ubale*
 - industry, police training, neighbourhood relations

The committee has arranged a series of meetings with leaders in each sector to discuss human rights concerns and to facilitate human rights activities in their various areas.

One of the committee's activities during the year was to contact various religious institutions across Ontario to promote the observance of the 30th Anniversary of the United Nation's Universal Declaration of Human Rights. The response was excellent with many religious organizations marking the week of December 10, 1978 as Human Rights Week. This involved special sermons, prayers and church-community activities with human rights themes. Canon Purcell, who organized this project in conjunction with the Canadian Human Rights Commission, also met with many religious leaders to discuss the development of human rights education programs in their localities. In addition, the canon represented the commission at the Irish School of Ecumenics International Consultation on Human Rights in Dublin.

Another area of activity is the work of the commission with industry and labour. The commission designs human rights seminars and conferences in employment and assists in mediating racial and ethnic disputes in the workplace. Meetings were held with the Ontario Federation of Labour, United Auto Workers and the United Steel Workers of America to discuss the development of human rights programs in local unions.

Various complaints have come to the commission's attention regarding newspaper and magazine articles which offend the spirit of the Ontario Human Rights Code. Commission representatives have met with major publishers to discuss stereotyping and to acquaint them with the concerns of various minority groups. One such concern is the identification of ethnic or racial minorities in crime reports where this is not related to the events reported. The commission also sponsored a meeting with major advertisers regarding the lack of visible minority group members in advertising and the stereotypic portrayal of minorities and women.

The Complaint Process

1. Intake
2. Investigation
3. Conciliation
4. Board of Inquiry
5. Prosecution

Intake

Anyone who has reasonable grounds for believing that a person has been discriminated against on the basis of one of the grounds covered by the Ontario Human Rights Code may file a complaint with the commission. It is also possible for the commission itself to initiate a complaint. The grounds of discrimination which are presently covered by the code vary with the context of discrimination.

The code prohibits discrimination in the following contexts and on the following specified grounds:

Signs and Notices

- publishing or displaying notices, signs, symbols or emblems indicating discrimination or an intention to discriminate (section 1)
- grounds: race, creed, colour, sex, marital status, nationality, ancestry, place of origin

Public Accommodation Services and Facilities

- providing accommodation, services or facilities available in any place to which the public is customarily admitted (section 2)
- grounds: race, creed, colour, sex, marital status, nationality, ancestry, place of origin

Housing

- providing housing accommodation or occupancy of commercial units (section 3)
- grounds: race, creed, colour, sex, marital status, nationality, ancestry, place of origin

Employment

- recruiting persons for employment, training, promoting or transferring employees, dismissing employees and terms and conditions of employment (section 4(1))
- grounds: race, creed, colour, age (40-64), sex, marital status, nationality, ancestry, place of origin

Employment Advertising

- advertising for employment section 4(2), (3)
- grounds: race, creed, colour, age (40-64), sex, marital status, nationality, ancestry, place of origin

Application Forms

- application forms for employment (section 4(4))
- grounds: race, creed, colour, nationality, ancestry, place of origin

Employment Agencies

- activities of employment agencies (section 4(5))
- grounds: race, creed, colour, age (40-64), sex, marital status, nationality, ancestry, place of origin

Trade Unions

- membership in trade unions (section 4a(1))
- grounds: race, creed, colour, age (40-64), sex, marital status, nationality, ancestry, place of origin

Self-governing professions

- membership in self-governing professions (section 4a(2))
- grounds: race, creed, colour, age (40-64), sex, marital status, ancestry, place of origin

Reprisals

- reprisal action for taking part in any proceeding under the Ontario Human Rights Code; for example, having laid a complaint or having testified in a proceeding under the code (section 5)

It should be noted that this list raises some questions of interpretation which have not been finally resolved. Questions remain for instance, about what kind of "services" are included in section 2, and the precise scope of certain grounds of discrimination such as "creed" or "sex". The commission presently deals with complaints of sexual harassment for instance, as discrimination on the basis of sex. Where the commission's jurisdiction to deal with a complaint is in doubt, a human rights officer may refer the issue to the commission's legal counsel for advice.

At the same time, the commission handles cases on an informal basis in which either the grounds of discrimination complained of, or the practice involved, are not within the letter of the code, but which indicate a violation of the spirit of the legislation.

Investigation

Once the complaint has been taken, a human rights officer is assigned to conduct an impartial inquiry to establish the facts of the case. As well as obtaining the respondent's account of the basis for the actions taken, this involves interviewing any witnesses or coworkers who have information with a bearing on the complaint. Investigation also includes an examination of relevant documents such as application forms, pay logs, time cards, attendance records, personnel files, records of performance, leases and rental records.

More specifically, the officer will pursue questions designed to disclose whether or not discriminatory conduct was the cause of the events which have been brought to the commission's attention. Those questions will vary among complaints. For instance, with respect to an allegation of discrimination in employment, the officer may ask the respondent the reason for an employee's dismissal. The officer will then try to find out if other employees were given penalties of less than dismissal for the same type of conduct which gave rise to dismissal of the complainant.

In a housing complaint, if a respondent tells a complainant there is no apartment available, the officer will check rental records. If the respondent states that the apartment is already rented, the officer will aim to find out when the successful candidate was offered the apartment and when the transaction was made.

With respect to complaints involving a denial of services or facilities, the officer may enquire if all benefits and privileges of membership or services are made available to all members or clients of the respondent organization. Are the terms and conditions of access to the service or facilities formulated as policy? Is the policy consistently applied to all patrons or clients? What proportion of the people who have been given access to the service or facility belong to the same group as the complainant?

Conciliation

The findings of the investigation form the basis of the next stage of the commission's function: conciliation. The Ontario Human Rights Code requires that an effort be made to effect a settlement of the matter. This has been interpreted to mean that emphasis should be placed on enforcement of the code, on conciliation and settlement, as opposed to the quasi-judicial forum of a board of inquiry to determine if there has been a breach of the code and the appropriate remedy. The rationale

for the emphasis on conciliation, in the words of past commission spokesmen, is "Such a procedure is predicated on the thesis that confrontation and accusation tend to reinforce the discriminatory attitude..." or, "To accuse a respondent would be to harden an attitude which he may not have been entirely conscious of holding..."

Conciliation is a process which involves three parties: the respondent, the complainant and the commission. The aim of conciliation is to arrive at a settlement which is satisfactory to all three parties. The findings of the investigation, or the strength of the evidence in favour or against the complainant's allegation of discrimination, will indicate the terms of an appropriate settlement. Where the evidence supports the complainant's case, the settlement should attempt to restore the complainant to the position he/she would have been in had the discrimination not taken place. (Evidence indicating, not discrimination within the meaning of the code, but a form of unfair treatment, may also suggest an appropriate settlement in the circumstances.)

Restoring the complainant to the position he/she would have been in had discrimination not taken place may involve one or more of the following remedies:

In the employment context

- changes affecting recruitment and employment policies
- reinstatement
- offer of the next available job
- consideration of an application on its merits
- lost wages
- damages for humiliation or mental suffering
- affirmative action

In the housing context

- offer of the next available apartment
- costs incurred by renting more expensive accommodation
- moving expenses in the event of a discriminatory eviction
- damages for humiliation or mental suffering
- changes in the provisions of leases affecting housing policies

In the services or facilities context

- a change in admission policy
- an offer of the services or facilities denied
- damages for humiliation or mental suffering

Most settlements also include assurances of future compliance with the provisions of the code.

The officer is under an obligation during conciliation to obtain a settlement which best represents the public interest. The public interest in the furtherance of the principles of the code involves a concern to prevent the future occurrence of discrimination. Where the evidence warrants it, prevention is clearly served by requiring the respondent to restore the complainant to the position he would have held had discrimination not taken place, or requiring the respondent to remedy the effects of the discriminatory conduct. However, prevention may also require additional steps. It may require consultations with respondents concerning their internal policies and practices and provision of advice on, for instance, the institutionalization of mechanisms to prevent a recurrence of the complaint. Prevention may involve affirmative action programs designed to redress entrenched practices which limit the opportunities of members of groups protected by the code. It may demand a declaration of management policy circulated to all personnel.

Board of Inquiry

During conciliation, the parties may not be able to arrive at a mutually acceptable settlement. When this occurs, the commission has a discretion to recommend to the Minister of Labour the appointment of a board of inquiry. A generally effective conciliation process is described as "demanding the skillful use of the carrot of conciliation and the stick of the quasi-judicial remedy – the board of inquiry".

In deciding how to exercise its discretion concerning the appointment of a board of inquiry, the commission takes into account the strength of the evidence supporting the complaint, the reason for the failure to effect a settlement, the value to the prevention of future incidents of discrimination in having a *public* consideration of the complaint, and the

importance of resolving a possible jurisdictional dispute.

When a board of inquiry is appointed, the commission is required to have the carriage of the complaint before the board. The Statutory Powers Procedure Act governs the procedural conduct of the board, and under section 14 of the code, the board is empowered to issue binding orders at the conclusion of the hearing. The onus of proof is on the commission to establish, on the balance of probabilities, that unlawful discrimination occurred.

The board's function is to determine (a) whether discrimination contrary to the Ontario Human Rights Code has occurred and (b) if it has, what is the appropriate remedy. If the board determines that the respondent has contravened a provision of the code, then it may order a variety of awards. Board orders commonly include such requirements as (a) a letter of assurance against further discrimination to be sent to the commission and often to the complainant (b) the posting of Human Rights Code cards in the respondent's rental or business premises or place of employment (c) notification to the commission and complainant of future rental vacancies or positions of employment, for a specified period. Boards also may award financial compensation to the complainant. This may take two forms: (1) an order of compensation (analogous to special damages), for out-of-pocket expenses incurred as a direct result of the discriminatory act; and (2) financial compensation (analogous to general damages), to alleviate the humiliation and indignity of the discriminatory act.

Either party may appeal the decision of the board to the courts.

Prosecution

The Ontario Human Rights Code has a provision for prosecution for a violation of the code itself or of an order made under the code. Resort to prosecution, however, is extremely rare.

Complaints resolved in 1978-1979

A sampling of typical complaints

Complaints of discrimination in housing accommodation

An immigrant from Trinidad alleged that she had phoned in answer to an advertisement for a vacant apartment, and was told the apartment was taken before she could discuss the accommodation, rental and facilities available. She then asked a white friend to phone about the apartment. The friend's questions about the apartment were answered, and she was invited to view the apartment later that day. The woman then filed a complaint of discrimination because of her race, colour, nationality, ancestry and place of origin.

Investigation revealed that there were only two non-white tenants in the building, and that the complaint of discrimination had been substantiated. In conciliation, the respondent agreed to rent the apartment to the complainant and made assurances that she would comply with the code in future.

A black Canadian living in Toronto alleged that the superintendent of a Toronto rooming house told him on the telephone that a room advertised that day was rented, but a cheaper one was available. When the man went to see the accommodation, he was told it had just been rented, but that another room was coming available shortly. He expressed his interest in it, and offered to make a deposit. However, the superintendent refused the deposit, and told the man to telephone in a day or two.

It was established that the two rooms had been rented soon after they became vacant, and evidence showed that the building management does not accept deposits, preferring to rent on a "first come-first served" basis. Following conciliation, the man was offered the accommodation of his choice, because even though the superintendent had not discriminated against him, the management saw that the policy not to accept deposits had created a perception in the applicant that he was being excluded for discriminatory reasons.

A South Asian woman alleged that she had telephoned a Toronto apartment building to ask about available vacancies. She was told by the superintendent that a

two-bedroom apartment would be available in two weeks. When she went to see it, she was instructed to fill out an application form and was asked her country of birth. When she telephoned to follow up her application, she was told the apartment had been rented, and no more were coming available. She then asked a Canadian-born white friend to telephone and ask about any future vacancies and the friend was told about the two-bedroom apartment.

Following investigation, the respondent told the human rights officer that the superintendent had been dismissed because he was an unsatisfactory employee. The respondent claimed the superintendent's discriminatory actions were in no way condoned by management. The complainant was then invited to view all vacant apartments, but she declined because she had decided to remain in her present accommodation. She was pleased that she had been given the opportunity to rent an apartment of her choice, and asked the officer to close the case.

A black Canadian living in Hamilton alleged that he viewed a vacant apartment, and was told that the rent would be \$180 per month and \$10 for parking. He expressed interest in the accommodation but was told to telephone later that day, as the superintendent had promised to show it to someone else. Because he believed that the superintendent was reluctant to rent the apartment to a black person, he asked a white friend to ask to see the apartment. The friend was offered the apartment for a rental of \$169 which included parking and cable TV. The man then filed a complaint of discrimination, alleging denial of occupancy of housing accommodation and discrimination with respect to terms and conditions of occupancy, because of his race and colour.

In investigation, the human rights officer interviewed the complainant's friend, who confirmed the man's story. In settlement, the management agreed

to send a letter of warning to the superintendent, and to post Human Rights Code cards on the premises. The complainant received \$473, of which \$173 represented out-of-pocket expenses incurred because of discrimination, and \$200 was payment for injury to his dignity. A letter of apology was also sent to him.

Complaints of discrimination with respect to public accommodation, services and facilities

A Native Indian couple checked into a northern Ontario motel and, following their registration, were asked to pay a \$5 key deposit. The couple had never heard of this practice, but nevertheless agreed to pay it. Then, when they were assigned a room in a certain wing of the motel, they refused it because they had heard that Native persons were usually restricted to that section of the motel.

Investigation showed that only Native Indians were charged a key deposit, and were confined to that wing of the motel. Also, the rules for guests were usually pointed out only to Native patrons, and only members of this group were charged the top rates for the motel accommodation.

Because the motel had been sold during the investigation, the settlement could not include an offer to the couple of their choice of motel accommodation. However, the complainants received a letter of apology from the management, and \$100 was given to them, in compensation for discrimination. The cheque was made payable to the Sioux Lookout Native Culture Week Festival, at their request. The new management of the hotel agreed to undertake seminars designed by commission staff in human rights and fair accommodation practices.

A Native woman, president of an organization fostering social and cultural events in her community, attempted to rent an auditorium from a nearby municipality in southwestern Ontario, because her organization had planned to hold a social benefit there. She alleged that although she was told the facilities were available, the auditorium manager informed her that he was under instructions not to rent them to Native persons. When she insisted, she was told to pay a \$2,000 bond to the management.

Investigation showed that another organization from the same reserve had received a letter from the municipality's parks and recreation department, stating that it was suspended from any future use of the facility, because some damage had taken place during a function the organization had held there. However, the human rights officer learned that similar damage had occurred during certain non-Native events in the auditorium, but these groups were not denied further use of the facilities. Moreover, other groups were not required to put up a bond.

Representatives from the municipality and the parks and recreation department entered into conciliation with the complainant and the officer. The respondents agreed to treat all Native organizations equally with non-Native groups, with regard to applications for use of the facilities. A Human Rights Code card was placed in all parks and recreation facilities, and the complainant received a letter of apology and assurances that the respondents would comply with the provisions of the code in future. Also, as an educational measure, the complainant was permitted to publish an article about the incident in her community newspaper.

An East Indian woman who had immigrated from Trinidad secured a transfer from a commuter train to a bus in a large Ontario city and was unaware that she had to pay an additional fare when she boarded the bus. She alleged that the bus driver became rude and abusive, calling her racially derogatory names when she tried to clarify the misunderstanding about the fare. The driver finally grabbed her arm and pushed her off the bus. She fell off the steps to the ground, and suffered injuries to her chest and arms.

Following this incident, the woman submitted a claim to the transit company for the expenses she incurred as a result of the incident. However, the company refused to honor the claim, saying her charges could not be substantiated.

She then filed a complaint with the commission, alleging that she was verbally and physically abused, and denied access to a service available to the public, because of her race, colour, nationality, ancestry and place of origin.

In the investigation, the human rights officer found evidence of physical abuse and denial of service because of the grounds alleged. The respondent agreed in conciliation to pay the woman \$100 to cover her expenses for medical treatment and damage to her clothing, and an additional \$200 for the suffering and humiliation which the incident caused her.

A black man living in Toronto alleged that payments of insurance benefits were cut off by the insurance company even though he was still unable to work following a knee injury which had required surgery. He said that an insurance agent had harassed him with frequent phone calls during the period he was receiving benefits, and had made racially derogatory remarks to him. The complainant also alleged that the insurance company later terminated his policy because of his race and colour.

Although the investigation could not determine that the company applied its policy differentially on the basis of race, the company agreed following conciliation to reassess the complainant's claim. On the basis of the new appraisal, the company restored full eligibility to the complainant and resumed payments of benefits. He was given a cheque for \$7,000, which included payments retroactive to the period for which he was not compensated. The company provided the human rights officer with assurances of its policy of non-discrimination.

A white woman alleged that when she entered a Toronto beverage room with her male companion and chose a table in the only room in the tavern which was uncrowded the couple was told by the waiter that women could not be served in that room, which was "for men only".

In investigation, the human rights officer was told by management that the waiter refused service to the couple not because it was a policy to keep the sexes separate, but out of a belief that men, and women with escorts, prefer to be served in separate rooms.

The manager agreed in conciliation to send a letter to the complainant, inviting her and her friends to revisit the lounge, and assuring her of his non-discriminatory policy. The woman expressed satisfaction with the outcome.

Complaints of discrimination in employment

An East Indian woman from Guyana alleged that she applied for employment as a seamstress with a garment manufacturer in a small Ontario town. She filled in an application form, and sat for two skill tests. The personnel manager told her she had done well on the tests and was qualified for the position. However, she was told that there were no job vacancies at that time.

The woman telephoned the company several times during the next few weeks, but was told there were still no openings. However, she had heard from a friend working at the company that there had been jobs available, which had been filled by white Canadians who were less qualified.

Investigation showed that 12 women had been hired after the complainant made her application, all of whom had lesser or comparable qualifications. All were white Canadians but one, who was Chinese.

Following conciliation, the company agreed to pay the complainant \$500 to compensate her for the earnings she had lost during the period she had been unemployed by being passed over by the personnel department. She was also offered a position with the company, which she accepted.

A black man from the Caribbean had been working as a mechanic for a construction company in Eastern Ontario for seven years, when a new superintendent was hired. The man alleged that although the superintendent found his work performance to be more than satisfactory, he was not permitted to use his own

car to travel to job assignments on construction sites in the field and instead was told to do clean-up duties at head office. The man alleged that he had always used his own car when a company vehicle was not available.

Two months later, the man was told by his supervisor that he was being laid off because of a shortage of work, in spite of the fact that others, who were white Canadians with less seniority, were being kept on.

Investigation showed that the company had laid off eight employees because of a work shortage, and that 12 white employees with less seniority were retained. The respondent expressed some concern with the complainant's work performance, but his former supervisor said he was comparable with his coworkers. In settlement, the complainant was paid \$620 in compensation for wages lost as a result of discriminatory termination.

A black woman from the Caribbean had been working for three years as a part-time nurse's aid in an eastern Ontario hospital. A year after she began work, she left because of pregnancy, but was promised re-employment if there was a vacancy. She was rehired, but was placed on a part-time evening shift, although she had applied for a full-time position. Over the next year, she alleged that she had applied for full-time openings on four separate occasions but was never considered. When she asked why, she was told the employer did not feel she could handle a full-time job.

When she learned that all the full-time jobs had been filled by whites, she filed a complaint alleging employment discrimination because of her race, colour, nationality, ancestry and place of origin.

The respondent told the human rights officer that there had been some concern about the complainant's reliability and attendance record during her first year of employment, and this was documented in her early written performance evaluations.

However, the officer learned that the complainant's performance had very much improved after she was rehired, and in fact, was comparable with other nurse's aides.

Following conciliation, the respondent offered the woman the next full-time vacancy for which she

qualified, and assured her that she would be placed on permanent staff following successful completion of a 30-day probation period. The respondent also posted Human Rights Code cards on the premises, and agreed to place senior management staff on a seminar in fair and non-discriminatory employment practices conducted by commission staff.

A Jewish man had worked as a scientist for a trade association for four years, and although there had been no problems with his work performance, he was troubled by the derogatory comments his employer frequently made about persons of minority racial and religious membership. On one occasion, the scientist responded angrily to an anti-Semitic remark the employer made to him, and an argument took place between them. The tension grew over the next year, and the man alleged that his employer told him he could resign if he did not like the work atmosphere, and he was denied his annual merit increase. Finally, the employer asked him to resign, giving him three months' notice. He then filed a complaint of discrimination in employment because of his creed.

During investigation, the employer said the man's termination was because of poor job performance. The human rights officer learned from witnesses that although the complainant's scientific credentials were good, he did not work well with his colleagues nor members of the association. There was considerable evidence that the employer made derogatory remarks to various Jewish or non-white employees.

In settlement, the respondent agreed to give the scientist an additional \$600 to increase his severance pay, and to allow him to take 10 working days off with pay to look for other employment. He was also given \$1,200 to cover the expenses he incurred while seeking employment, and as partial mitigation of the denial of his merit increase. Since the man found a job which paid a higher salary, there was no payment for out-of-pocket earnings.

A white Canadian woman from an eastern Ontario city answered a newspaper advertisement placed by an employment agency recruiting and screening applications for a position with a loan company. She was asked to come in for an interview and to take some tests. The counsellor told her she met the qualifications, and made arrangements to refer her to the company. However, the company informed the agency that they did not want women, because the job involved considerable travel.

During the investigation, the human rights officer was told by the loan company that the applicant was not refused employment because of her sex, but because she lacked sales experience. The officer learned, however, that although the company did have female sales representatives, a man with very little sales experience was hired for the advertised position. In conciliation the company agreed to interview the complainant and assess her qualifications equally with those of other applicants. Because she had found employment elsewhere, she declined, but she was pleased that the company affirmed a non-discriminatory policy.

A black woman from Jamaica had worked as a nurse's aide for three years in a Toronto clinic, and there had been no problems with her supervisors until she was elected union steward for her shift. At that time she began to experience various forms of harassment, which she believed was due to her support of the rights of non-professional workers at the clinic, most of whom were also black.

On one occasion, she alleged that she had been terminated because she had kept a patient's wallet in safe-keeping at his request, and with the approval of the staff nurse on duty. She was reinstated following a union grievance. Later, she was suspended for a day when she failed to report that she was leaving for lunch, although the normal procedure had been to report only when back from lunch.

Finally, she was terminated for "refusal to comply with reasonable instructions," and she filed a complaint with the commission.

The evidence substantiated her allegations of harassment and of unfair dismissal. As it was difficult to assess to what degree discrimination took place

because of her race, colour, ancestry and place of origin, or because of her union activity, both the union and management were brought together with the complainant and the human rights officer in conciliation. Here, the officer explained that he had been given very good reports of the complainant's work performance during investigation. The complainant had also filed a grievance with the union, and she agreed that if she received an adequate settlement as a result of the grievance, she would consider this remedy for unlawful discrimination under the code.

In settlement, the complainant received \$3,500 following arbitration, and was reinstated in her position. She was also promised a favourable letter of reference if she were to resign.

A computer operator employed with a large Toronto data processing firm had received positive written evaluations of his performance every year since he was hired in 1975. He had also received a promotion after one year of service. He was one of only three blacks employed as professionals by the company.

After three years of employment, he alleged he was given a poor evaluation of his work performance, and told that he would be terminated if he did not improve within two months.

His supervisor alleged that he was given notice of dismissal eight months before his termination. However, during the eight-month period his supervisors had not appraised his work performance. The complainant believed termination was based on his race and colour.

During investigation, the human rights officer interviewed many witnesses from the management and professional staff. All agreed that the complainant was an intelligent person who demonstrated high potential, but he had not achieved in line with his peers. Also, management had offered to counsel him in methods to improve his performance and update his knowledge and skills, but the complainant had declined to follow this advice. Evidence also showed that management had been concerned about his work

performance at various times during his employment, but had nevertheless made favourable assessments of his skills during the first three years of his service.

In conciliation, the employer said he felt that the complainant would likely perform very well in a different work environment, and agreed to provide him with a letter of reference. The human rights officer then consulted with the complainant, advising him on the best approach to finding employment with a more suitable company. The complainant was satisfied with these findings, and with the assistance he had received.

A 61-year-old man, who was born in Czechoslovakia, approached a Toronto employment agency to seek employment as an accountant/bookkeeper in response to an advertisement. He possessed the proper educational qualifications and work experience. During a telephone conversation with a counsellor at the agency, he alleged that he was asked his age and nationality. Upon giving this information, he was asked to hold, and was then told that the position had been taken. He then filed a complaint of discrimination because of his age, nationality and place of origin.

The human rights officer learned during investigation that the counsellor had asked the complainant's age, and felt he was too old to undertake a job involving pressure, in spite of the fact that the complainant's former employers provided the officer with evidence of his good work performance and qualifications. The counsellor, however, was a new employee and had acted contrary to agency policy in screening out the complainant because of his age. The officer also found a significant number of clients of older ages who had been placed by the agency.

In conciliation, the agency agreed to market the complainant's skills and arrange interviews for him as soon as possible. They also secured him a temporary assignment until he found a permanent position. Both the complainant and the commission were given assurances of the agency's non-discriminatory policy.

In another complaint of discrimination because of age, a 62-year-old white Canadian woman, with 35 years of employment as an accounting clerk with a Toronto manufacturing company, alleged she was told that she was being put on short time because business was slow. She was the most senior employee in terms of service, and was the second oldest in age. When she asked her employer why her work week was being cut

to three days, she was told that the company "wanted to give younger people a chance." There had been no problems with her performance, and she had taken courses in accounting to upgrade her skills. She then filed a complaint with the commission.

When the respondent received a copy of the complaint, he arranged to discuss the matter with the complainant. Both parties invited the human rights officer to be present at their meeting. The employer then notified the complainant in writing that she would be placed back on a five-day week. The complainant was satisfied with the outcome, and notified the commission that she wished to withdraw her complaint.

A woman who had immigrated from Sri Lanka was hired in 1975 to wash dishes in a Brampton restaurant. The manager told her that if her work was satisfactory, she would be trained and promoted to cook, as it was management policy to fill senior positions from within. She alleged that the manager who hired her was replaced several months later, and since that time, no non-whites had been hired and only white workers had been promoted to cook. The woman claimed, however, that she had assisted the cooks on many occasions and had learned many aspects of that position.

She also alleged that since the new manager was hired, she had been asked to clean the washrooms, a task that white dishwashers were never asked to do.

Following her vacation, the woman returned to find that a white person, who had been hired to replace her during her absence, was asked to stay on and the complainant's hours were cut to three days a week. When this new employee was given an opportunity to train for cook, the woman filed a complaint of discrimination in employment because of her race, colour, nationality, ancestry and place of origin. Shortly afterward, she was dismissed, and filed a second complaint of reprisal, alleging the termination was because she had lodged a former complaint with the commission.

The evidence was inconclusive with respect to several of the allegations, but there was evidence that the employer had told the complainant that her job performance suggested she would not be competent in a position as cook.

In settlement of the two complaints, the employer paid the complainant the sum of \$522.05 for earnings lost as a result of discrimination.

A Canada Manpower counsellor had referred an East Indian man to a Hamilton manufacturing firm which had a vacancy for a bookkeeping clerk. However, when the man telephoned he was told that a woman was required for the job. When he attempted to describe his experience and qualifications, the personnel officer said that she could not understand his accented speech. He then filed a complaint of discrimination because of his sex, age, colour, nationality, ancestry, and place of origin.

During investigation, the employer admitted that he was looking for a woman, because "a man could not live on the salary."

Following conciliation, the complainant received \$350 in compensation for the two weeks he was out of work before he found another job. The company agreed to post on its premises a Declaration of Management Policy to comply with the code, and wrote a letter of assurance to the commission.

In another complaint of sex discrimination, a white Canadian woman answered an advertisement in a Hamilton newspaper, recruiting a management trainee for a store. She telephoned the manager of the cosmetics department for an appointment, and was invited to fill out an application form. Having done so, she was told the job involved some stock work and heavy lifting, and that it was "really a man's job." When she was not offered the position, she filed a complaint with the commission.

During investigation, the human rights officer was told by company management that a woman could not perform the job. However, employees in the same department claimed that most women could do the work as capably as a man. In conciliation, the officer was accompanied by a representative of the Ontario Women's Bureau, who explained its program of affirmative action for women. The company agreed to conduct such a program, and to discuss its progress with the commission on an annual basis.

Additional settlements included the posting of Declaration of Management Policy cards in all departments of the store, and a staff directive to comply with the provisions of the code. Management also agreed to participate in a seminar on fair recruitment and interviewing practices. As compensation for lost wages and damages for the humiliation caused to the complainant, she received \$465.

A white Canadian woman who is a member of the Apostolic Christian Church was told by her employer that she must wear a uniform comprising slacks and jacket while working in her part-time job with a large wholesale food terminal in Kitchener. However, her religion prohibits women from wearing slacks, and she asked for permission to wear a uniform skirt or dress. The employer refused and gave her notice to terminate. Because she believed that she was being discriminated against because of her creed, she filed a complaint of discrimination in employment with the commission.

In investigation, the human rights officer had to determine whether or not it would work an unreasonable hardship on the employer's business to accommodate the complainant's religious beliefs and practices. The investigation did show that a dress code was in effect, requiring slacks to be worn, but other employees told the officer that the nature of the job and the work environment did not necessitate any specific garments, and they said they would not mind if the complainant were permitted to wear other clothing. The employer said her work was excellent, and the uniform requirement was the only reason for terminating her.

The respondent agreed in conciliation to allow exceptions to the uniform policy, and to reinstate the complainant. She received \$378 representing lost wages, and the firm posted Declaration of Management Policy cards on the premises.

Shortly after she began working as a waitress in a Dundas, Ontario restaurant, a white Canadian woman alleged that one of the owners made sexual advances toward her, and subjected her to physical and verbal sexual abuse. She tried to reject the advances, but was unable to avoid him. A few weeks later she complained to the co-owner, but he refused to take any action, and finally she resigned. She filed a complaint, alleging that she was discriminated against with respect to the terms and conditions of her employment because of her sex, and had been forced to leave her job.

During investigation, the respondent denied the allegations, and said he had thought of firing the complainant on a number of occasions because of her poor work performance. The human rights officer interviewed everyone who had worked at the

restaurant in the past year, and five women confirmed that they had been sexually harassed by the respondent. Other employees had been told by the women that the employer had made physical and verbal advances during working hours.

Following conciliation, the employer agreed to pay the complainant the sum of \$400 to compensate her for earnings lost and the injury to her dignity caused by discrimination. He also agreed to provide her with a letter of reference, and to post Declaration of Management Policy Cards on the premises.

A white Canadian woman had been employed with a large mine in northern Ontario for four years as a general labourer when she saw a job posting for "pumpman" and "conveyorman." She applied for both, but was refused and was told that the company did not have any washroom and shower facilities for women at the job site. Males with less seniority were placed in the positions. She filed a complaint alleging she was refused employment because of her sex.

Investigation substantiated the allegation, and the employer admitted the complainant would have been competent to perform either job. Union officials who were interviewed said there were several options available to the employer for resolving the problem, such as converting the washroom facilities used by supervisors for use by women employees. The employer maintained, however, that the alterations would be too costly, in light of the small number of women who would use the facilities.

Following conciliation, the company agreed to build washroom facilities for female employees, and to place the complainant in the conveyorman position. She was compensated for the difference in pay between her former job and the new position during the period she was denied employment. A letter of assurance was sent to the commission, stating that all jobs will be open to women in future, subject to existing legislative provisions.

A white Canadian woman alleged that she had been employed as a police constable on an Ontario police force for over 20 years, but had never received promotions in line with her experience or length of service. She was aware, however, that men with comparable qualifications had all been promoted. Also, her duties were the same as those assigned to civilians

on the force, and she had never been permitted to perform the lucrative and interesting special duties which her male counterparts had bid for and received. Her requests to go on special upgrading courses were always denied.

She filed a complaint of discrimination with the commission, alleging that she had been refused training and promotion, subjected to an unusually long probation period, and had been maintained in a separate job classification, category and line of progression because of her sex.

The investigation revealed that the employment policies and practices of the department favoured the advancement of males, and witnesses for the respondent told the human rights officer that women were generally unable to perform law enforcement duties. However, other employees reported that the complainant had demonstrated high ability and potential. In addition, discussions with other police forces in Ontario revealed that they had placed women in these duties, and their performance was satisfactory. At no time in her long history of employment with the force did the complainant receive any training of the type which male officers were urged or permitted to take. The job category in which she was placed prevented her from any promotional sequence, and no male officers were placed in this category.

Following conciliation, the department agreed to promote the complainant to senior constable, and to reassign her a new set of policing duties. Together with the promotion, she will be placed on courses that are appropriate to these duties. Senior management received a consultation from the commission in the design of methods to develop fair recruitment and employment practices.

A white Canadian woman who qualified to teach industrial arts answered an advertisement in a Toronto newspaper for a teacher in these subjects, with a southwestern Ontario secondary school. She was invited for an interview, and was left with the impression that her qualifications had been considered excellent for the job.

She alleged that she later heard she had not received the job, and was prepared to forget the matter until she learned that the vacancy was not filled, and several males in her class in the faculty of education had been asked to apply. She then telephoned the school, and was told that although her qualifications were suitable, it was felt the local community might not accept a woman in the position. She then filed a complaint of discrimination because of her sex.

During investigation it was revealed to the human rights officer that the previous industrial arts teacher, a male, had been very popular with the students, and had performed counselling and coaching functions for the male students. The employer felt that a woman would be less suitable to perform these extra duties. However, other persons who applied for the position were not told during their interviews that these duties would be required of them.

After the complainant was denied the position, she moved to another province in order to accept a job in her field. She reported she was receiving a higher salary there than the Ontario school offered.

In settlement, the respondent agreed to pay the woman \$805.18 in compensation for the out-of-pocket expenses incurred because of the move. The complainant was satisfied with the outcome.

A black Canadian woman alleged that she telephoned a Toronto restaurant to inquire if there were any openings for a qualified waitress. The man who answered said that a job was available, if she could report for work that evening. The woman did so, but when she met the owner, he said he was unsure about the vacancy and would have to consult with his wife. She was then told the restaurant was not short of waitresses at that time, but the owner would call her if an opening came up. When the woman called a few days later, she was told to wait for their call. She then filed a complaint of discrimination because of her race and colour.

The owner told the human rights officer during investigation that he had never employed black persons as waitresses, and when he saw that the complainant was black, he decided to withdraw the job offer. He said he believed that his customers would leave the restaurant if he hired black personnel.

In settlement, the respondent agreed to pay the woman \$84 representing part-time earnings lost during her period of unemployment. He also offered her a job, which she declined because she had found alternative employment. He gave assurances that he would comply with the provisions of the code in future, and apologized to the complainant for the discriminatory treatment.

A 57-year-old white Canadian alleged that he began working for a Toronto manufacturing firm as a warehouse manager four years ago. He was promoted a year later, and as far as he knew, there had never been any problems with his work performance. In 1978, he received a letter requesting his resignation, explaining that the employer was making organizational changes and planned to give some of the younger men a greater amount of responsibility. The man filed a complaint of discrimination because of his age.

The investigation revealed that the employer's son and his son-in-law had been promoted to management positions, one of which had been held by the complainant. Witnesses claimed that the man had been a diligent and conscientious worker.

The man found suitable employment within five weeks of his termination, and had received 12 weeks' salary in severance pay. The commission negotiated a settlement of an additional \$800, and a cheque in this amount was paid to him following conciliation.

A white Canadian woman had worked as a production control clerk for a large Toronto manufacturing company for two years, when her supervisor became ill and resigned. The woman alleged that she had been performing all of his duties for a year, but had never received a salary increase that would compensate her for the additional functions and responsibilities. When she discussed the situation with her employer, he said that the other employees would not accept a woman as their supervisor, and her title would therefore not be changed. She was, however, given a raise which brought her salary to within \$4,000 of the former incumbent's earnings. She informed her employer that she would file a complaint of sex discrimination, and he then told her she was dismissed. Her complaint alleged discrimination in employment and reprisal action.

Investigation revealed that the complainant had performed the same duties and held the same responsibilities as her male predecessor, and her competence had been equal to his. The employer told the human rights officer that her requests for promotion and a salary increase had amounted to "insubordination", but the complaint of retaliatory dismissal was not substantiated.

In settlement, the respondent agreed to pay the woman \$1,650 in compensation for lost earnings. As the complainant found a position at a higher salary and involving similar duties, she accepted the settlement as remedy for the treatment she had received.

A black immigrant from Guyana was hired as a chef for a Toronto hospital in 1976 and, as far as he knew, his performance had been satisfactory. However, in 1978, a new chef, who was white, was hired and became the complainant's supervisor. Two weeks later the complainant was dismissed.

In investigation, the employer claimed that the dismissal took place because the complainant had refused to supervise other kitchen staff, in spite of the fact that the position involved supervisory duties. However, the human rights officer found that the chef's salary was not in line with the salaries paid to the other chef-supervisors, all of whom were white.

During the conciliation, the officer explained that all of the duties and responsibilities required in a position should be adequately defined and understood by job incumbents. The respondent offered to reinstate the complainant as chef-supervisor and to increase his salary, but the complainant did not wish to return to work there. The employer paid the complainant \$2,513.47, representing earnings lost from the date of dismissal to the date of the offer of reinstatement.

A Sault Ste. Marie woman alleged that she had applied for a part-time position as bartender with a private men's club but was told that the position was open only to males. She was told she could apply for work as a waitress.

During investigation, the manager told the human rights officer that he was afraid that the club's patrons would not accept a woman bartender because they would feel constrained in their use of "rough language". However, the officer learned that waitresses serve meals in the beverage room, and their presence there had received no objection. Nor was there evidence that sex was a *bona fide* qualification for performing the job duties.

In settlement, the employer placed the complainant in a part-time bartending position, to work at mixed functions held at the club.

A man who is a member of the Seventh Day Adventist Church was employed for three months as an assembler with a Windsor automobile manufacturer, when he was terminated because he was unable to work on Friday nights and Saturdays because of the requirements of his faith. He was rehired several months later, but was denied his previous seniority. He

filed a complaint alleging that he was terminated, subjected to an enlarged period of probation, and was placed on a separate seniority list, because of his creed.

In investigation, the commission had to determine whether or not the employer would have faced undue hardship had he accommodated the complainant's religious obligation to be absent on Friday evenings and Saturdays. The respondent produced an application form which the complainant had filled out, stating that he could work any and all shifts as required. Also, the company had attempted to accommodate the complainant during most of his employment, but was no longer able to, just prior to his termination, because the company was running at least two shifts in all its plants, and week-day shifts were available only to persons with 30 years' seniority.

In conciliation, the respondent was unable to accommodate the complainant's request for time off for religious observance, but he agreed to give him one year of additional seniority, which put him in a position to bid for better jobs and to avoid impending layoffs. The complainant was satisfied with the outcome.

A woman with long-time experience as a nurse's aide in a northern Ontario hospital applied for a position as orderly within the hospital. The hospital wished to limit the position to men, and applied to the commission for an exemption from the provision of the code which prohibits discrimination in employment because of sex. The employer claimed that women were unsuitable for the position because orderlies were required to provide personal care for male patients.

The investigation showed that because of a shortage of orderlies in the hospital, the nurse's aides were performing some patient care duties for men. Moreover, orderlies do not have to undertake formal training in nursing in order to qualify, but a nurse's aide must possess a two-year certificate from a recognized school of nursing. Nevertheless, the salaries were the same for both occupations. The commission therefore denied the request for an exemption.

In settlement of the complaint, the hospital agreed to hire the complainant for the next available position of orderly.

Boards of inquiry

Decisions 1978-79

West Park Hospital & Wahtrik

Mrs. Wahtrik filed a complaint with the Ontario Human Rights Commission alleging that she had been discriminated against in her employment because of her age. After 22 years of service at the age of 59, she was dismissed from her job as head nurse at the West Park Hospital by her supervisor, the director of nursing.

The inability of the commission to arrive at a satisfactory settlement – measured in light of the weight of the evidence supporting the allegations of discrimination and the injury suffered by the complainant (she was unable to find regular employment in her area of specialization, but had planned an early retirement at the age of 62) – during conciliation prompted the commission to recommend to the minister the appointment of a board of inquiry in accordance with the provisions of the code.

The board of inquiry under the chairmanship of Professor Martin Friedland, University of Toronto Faculty of Law, convened on March 21, 1978. The board chairman announced at the outset that a settlement had been reached to the mutual satisfaction of the parties involved. The chairman stated that: "The parties had resolved their differences upon the basis that the termination of Mrs. Wahtrik's employment by the West Park Hospital was not an act of discrimination by reason of age but was to be settled between the parties upon the basis of the hospital's contractual liability to compensate Mrs. Wahtrik for her wrongful dismissal."

Norseman Plastics Ltd. & Blackstock

Miss Blackstock filed a complaint with the Ontario Human Rights Commission alleging she had been discriminated against in her employment because of her race, colour, nationality, ancestry, and place of origin. Her complaint alleged a contravention of sections 4 and 5 of the Ontario Human Rights Code. Section 4 (1) prohibits, among other things, dismissal on the above-mentioned grounds. Section 5 prohibits various forms of reprisals for taking part in proceedings under the code. The material allegation in this case was that the complainant had been dismissed in reprisal for an earlier complaint made to the commission.

The complainant had been a machine operator with the respondent company for four years when her employment was terminated in May, 1976. At that time she filed a complaint which was subsequently resolved and Miss Blackstock was reinstated. She was fired, however, in December, 1976.

The complainant alleged that this termination was a reprisal for having taken her earlier complaint to the commission. She alleged that in one incident, to which there were a number of witnesses, the owner of the

respondent company said: "When I kick you out the next time, no Human Rights Commission will bring you back here. As a matter of fact, if the Human Rights Commission come here I kick them out. I have \$10,000 to fight them in court or buy them out."

The owner of the respondent company admitted: "Yes, I did make the statement that if it cost me \$10,000 to fight this in a court of law, I will do it because I am not a bigot, nor is the company; we don't discriminate."

Miss Blackstock was fired personally by the owner of the respondent company, Mr. Walton, although the usual procedure in the case of operators was for notice to be given by a foreman. Mr. Walton could not remember personally firing any other operator in the previous two years. When fired, she was also deprived of her severance pay.

During the commission's investigation, Mr. Walton refused to discuss the reasons for Miss Blackstock's dismissal in detail. He insisted, however, that her work was not satisfactory and that she was fired for insubordination.

The inability of the commission to arrive at a satisfactory settlement of the case during conciliation prompted its recommendation to the Minister of Labour that a board of inquiry be appointed.

The board, under the chairmanship of Professor Bruce Dunlop, University of Toronto Faculty of Law, found that Mr. Walton did not practise discrimination, and his firing of the complainant did not constitute a contravention of Section 4 of the Ontario Human Rights Code. However, the board did find that resentment over Miss Blackstock's complaint of May 1976 was a significant reason for her dismissal in December, 1976 by Mr. Walton and that there had been a breach of section 5 of the code.

The board decision stated: "Howard Walton's position was that the commission was involved unnecessarily in the affairs of his company, that its very existence was being used as a weapon against him and that the amount of time devoted by the commission to his company's affairs constituted harassment and created an impediment to proper company operations . . . Howard Walton not only resented the commission's involvement in his affairs, he resented the fact that Gloria Blackstock had brought this about."

Referring to the triggering incident of finding defective parts in a box coming from the complainant's machine, and the later alleged insubordination on the part of Miss Blackstock, the board said: "Gloria Blackstock was generally a good worker and

production problems of the moment, although Howard Walton evidently felt differently, were not her fault. In ordinary circumstances, one is led to conclude, Howard Walton... would have accepted her explanation because he was also a person one could talk to and gets over his anger fairly readily. However, the circumstances were not ordinary because of the added reason for Howard Walton's anger."

Having found a breach of the code, the board determined the following as the appropriate remedy: Miss Blackstock was out of work for 32 weeks. No evidence suggested she was anything but diligent in seeking alternative employment after her dismissal. For 26 of the 32 weeks she received unemployment insurance payments of \$98 a week. Her weekly income at Norseman Plastics was \$144. The amount of compensation awarded was the sum of the difference between her 32 weeks' lost income and the amount she had received in unemployment benefits, i.e. \$2,060. The board chairman was also of the view that if the amount of compensation were reduced by the amount of unemployment insurance benefits she had received, the employer himself would be liable to pay back the unemployment insurance benefits.

Glaverbel Glass Ltd. & Pencoff

Miss Pencoff filed a complaint with the Ontario Human Rights Commission alleging she had been discriminated against in her employment because of her sex. Her complaint alleged a contravention of section 4 of the Ontario Human Rights Code. She began working in October, 1970 for Crystal Glass & Plastics Ltd., which later became known as Glaverbel Glass Ltd. From 1973 until the time she was dismissed, the complainant alleged that she had unsuccessfully attempted to secure advancement for herself within the company. She alleged that she was denied a position as purchasing agent, an opportunity in outside sales, an opportunity to train for employment in the glass department and the opportunity to be hired in the hardware manager's position when it was created. All these opportunities, Miss Pencoff alleged, were given to men.

In September, 1976 the company terminated Miss Pencoff's employment because of a "shortage of work." When this occurred, Miss Pencoff, who believed her work record to be excellent and who believed that preference was given to male employees in the company, arrived at the conclusion that the real reason for her dismissal was discrimination on the basis of her sex.

Because conciliation did not achieve a settlement of the complaint, the commission recommended the appointment of a board of inquiry.

The board, under the chairmanship of Professor Mary Eberts, University of Toronto Faculty of Law, convened July 10, 1978. Counsel for the commission and for the respondent then outlined the nature of a settlement which had been worked out one week before the hearing date. The board chairman pointed out in the summary of the proceedings: "Because there was no hearing of the complaint, there can of course be no findings of fact as to whether the company behaved as was alleged by Miss Pencoff, and no conclusion as to whether its conduct amounted to a violation of the Human Rights Code."

Central Registry of Graduate Nurses & Keane

Mrs. Keane filed a complaint with the Ontario Human Rights Commission alleging she had been discriminated against in her employment because of her age. Her complaint alleged a contravention of section 4 of the Ontario Human Rights Code.

At the age of 60, Mrs. Keane attempted to register for employment as a registered nurse with the Central Registry of Graduate Nurses. The Central Registry, as the name implies, is a registry where nurses who are members sign on when they are out of work; when someone telephones the registry for a nurse, the nurse whose name is at the top of the list is offered the job.

After filling out an application form which requested her date of birth, the complainant was interviewed, and informed that her application could not be accepted because it was the registry's policy not to accept applications of nurses over the age 60. Counsel for the Central Registry confirmed that the by-laws of the registry stated: "No new member shall be admitted over the age of 60." Present members, however, were permitted to remain members until the age of 65. Over the age of 65, the member was required to submit a medical certificate annually showing physical capability to do the job. In other words any member over the age of 65 could apply for reinstatement from year to year and the registry's board had the power to accept or refuse such reinstatement as it saw fit.

The respondent in this matter took the position that the commission had no jurisdiction to deal with complaints arising with respect to their organization. The inability of the commission to arrive at a satisfactory settlement of the case prompted the recommendation to appoint a board of inquiry.

The board of inquiry under the chairmanship of Professor Martin Friedland, University of Toronto Faculty of Law, convened on August 25, 1978. At that

time counsel for the commission informed the chairman that a settlement had been reached. The terms of the settlement incorporated in the board order were as follows:

1. The Central Registry of Graduate Nurses, Toronto, will amend its by-laws, rules and regulations relating to the qualification of members, by substituting for the present provisions the words set out as follows:

"No new member shall be admitted over the age of 65 except as hereinafter provided. The membership of present members shall cease at the age of 65, provided, however, that any member over the age of 65 may apply for reinstatement, and any applicant over the said age may apply for membership and thereafter for reinstatement annually from year to year and the board shall have power to accept or refuse such membership as they shall see fit."

2. The Central Registry of Graduate Nurses will write a letter of assurance to the Ontario Human Rights Commission undertaking forthwith to admit new members without regard to their age as defined in the Ontario Human Rights Code and to abide in the future by the provisions of the standards of the code. A copy of the amended by-laws will thereupon be sent to the commission. The Central Registry of Graduate Nurses will treat applications for membership in the manner to be set out in its letter of assurance forthwith from the date hereof.

3. The Central Registry of Graduate Nurses will forward a letter of apology to the complainant with a copy to be furnished to the commission inviting the complainant to apply for membership should she so desire in the future.

4. The Central Registry of Graduate Nurses will post in a prominent place in its offices the "Declaration of Management Policy of the Ontario Human Rights Commission" and will make its records available to the commission upon request to verify its compliance with the foregoing assurances and undertakings.

Ottawa Board of Commissioners of Police & Ottawa Police Chief Leo Seguin & Colfer & McAdam
Ms. Colfer and Ms. McAdam filed complaints with the Ontario Human Rights Commission alleging each had been discriminated against by being denied employment because of her sex, a contravention of

section 4 of the Ontario Human Rights Code. Both women were refused employment as constables with the Ottawa Police Department.

Investigation revealed that Ottawa Police Department policy required all applicants for a constabulary position to be at least 5 ft. 10 in. tall. Ms. Colfer is 5 ft. 7¹/₄ in. tall, and Ms. McAdam is 5 ft. 6 in. tall.

At the time of the complainant's application the Ottawa Police Department had 580 male officers and six female officers. Five of the female employees were originally appointed as "meter maids" and were later transferred to positions as constables, rather than dismissed, when this method of parking control was discontinued. The Ottawa police force had only once in its history through its recruitment process accepted a female applicant as a regular constable. Of the six female constables, then, only one was 5 ft. 10 in. or taller. Since less than five per cent of women are 5 ft. 10 in. or taller (though a near majority of men are of at least this height), the effect of the application of the minimum height standard of 5 ft. 10 in. was to deny virtually all women employment as police officers.

The inability of the commission to arrive at a satisfactory settlement of the case prompted the commission to recommend to the minister the appointment of a board of inquiry.

The board, under the chairmanship of Professor Peter Cumming, Osgoode Law School, York University, found that the Ottawa Police Department had discriminated against Ms. Colfer because of her sex. (The complaint of Ms. McAdam was adjourned *sine die*.)

The board considered, among other things, one issue of law fundamental to a concept of discrimination. Though the effect of the Ottawa police force's employment policy was to deny virtually all women employment as police officers, the board found that "the respondents did not have the intention, or motive of discrimination toward the complainant because of her sex." The question raised before the board therefore, was: "If there is no intention to discriminate against women, but the effect of the policy and rules in application is to exclude women from employment, is there discrimination within the meaning of section 4(1) (a), (b) or (g) of the Ontario Human Rights Code?"

A review of the American and English case law on the issue and an acceptance of the doctrine embodied in the American decision of *Griggs v. Duke Power Co.* (1971) 191 S.Ct. 849, led the board to give the following reply. "It is the result of the alleged discriminatory

criteria and not the intention of the respondent which is determinative; Intent to discriminate is not a prerequisite to establish a contravention of the Ontario Human Rights Code...there can be discrimination within the meaning of the statute if the result of applying employment regulations is to exclude women."

Secondly, the board determined that the complainant must make out a *prima facie* case of discrimination as a result of the respondent's height and weight requirement; then if the board was satisfied that these requirements had a disproportionate impact on one of the protected groups under the human rights legislation, the onus would fall upon the respondent to show that the requirements in question were job-related.

The board arrived at this decision again after a review of the relevant American decision and upon consideration of the intent of the Ontario Human Rights Code. The board stated: "If one falls back upon the philosophy expressed in the Ontario Human Rights Code, it follows that the onus should fall upon the employer to demonstrate that he is unable to reasonably accommodate to a prospective employee's gender without undue hardship on the conduct of his business, once a *prima facie* case has been established of discrimination through the application of the employer's employment regulations... Placing the onus on the employer to prove undue hardship on his business is a very sensible approach. The employer is in the best position to understand and explain why his hiring practices are dependent upon the operation of his business."

Subsection 4(6) of the Ontario Human Rights Code states:

"(6) The provision of this section relating to any discrimination, limitation, specification or preference for a position or employment based on age, sex or marital status do not apply where age, sex or marital status is a *bona fide* occupational qualification and requirement for the position or employment. 1974, c.72 s.2."

The board interpreted this subsection as follows:

"I interpret this excepting provision as placing the onus upon the respondents, once a finding of *prima facie* discrimination (albeit indirect discrimination through the apparently neutral criteria of the minimum height and weight standard) has been made with respect to Ms. Colfer's seeking employment as a police officer."

The board also expressed a view as to the meaning of *bona fide* in the context of this case. "In my opinion, the words *bona fide* do not simply mean "good faith" or "honest intention" but require also that the employer show that the minimum height standard of 5 ft. 10 in. is reasonably necessary to the employer's operations as a police force."

In this case the board found that a seemingly neutral job requirement had the effect of disqualifying a disproportionate number of one sex since less than five per cent of women would meet a 5 ft. 10 in. height requirement. Hence the requirement was *prima facie* discriminatory. The respondents then had to bear the burden of establishing "a rational relationship between the size requirement of police officers and the job they must perform."

The board heard the testimony of an expert witness by the name of Dr. Sichel. The chairman noted: "Dr. Sichel's evidence, in summary, is that first, in her opinion based upon her study, women can perform the job of police officer as well as men and, second, that a minimum height requirement is not a meaningful requirement in assessing applicants for the position."

On the testimony of the respondent, Police Chief Harold Adamson, the board chairman remarked:

"... It is clear from the totality of his evidence that he agreed with the opinion of Dr. Sichel, in as much as in his experience as well, female police constables function as well as male officers." At the same time, though: "Chief Adamson did disagree with Dr. Sichel on the point of the necessity of minimum size requirements. The conclusion one reaches from the evidence of Chief Adamson and Staff Sergeant Shaw is that although there is merit in having some requirements, as has the Metro Toronto Police Department, there is no rational basis for the 5 ft. 10 in. and 160 pound requirement for a female applicant."

The finding of the board was then: "The onus in such a situation falls upon the respondents to justify the size requirements as *bona fide* occupational qualifications, and I find that they have not done so. Indeed, I would find on the evidence in this case that there is no rational basis for minimum height and weight requirements greater than national averages. Any minimum height and weight requirements for females cannot be in excess of figures which will result in equality of opportunity for each gender. The size requirements cannot have a disproportionate effect upon one gender."

Hence, the board chairman found that the respondents had contravened the Ontario Human Rights Code. The remedy ordered was that the Ottawa

police force was to deal with the complainant's application to be a regular police constable on its merits without regard to any height and weight requirements; if her application was successful on its merits she was to be placed on the waiting list as though it had been accepted 18 months prior to the actual date of acceptance; and either minimum height and weight requirements for all applicants for the position of police constable with the Ottawa police force were to be abandoned or different minimum height and weight requirements for male and female applicants should be established such that neither gender, as a group, is discriminated against because of sex in applying for the position of police constable with the Ottawa police force.

Metropolitan Board of Commissioners of Police & Police Chief Harold Adamson & Adler

Mr. Adler filed a complaint with the Ontario Human Rights Commission alleging that he had been discriminated against by being denied employment because of his sex, a contravention of section 4 of the Ontario Human Rights Code. Mr. Adler's application to the Metropolitan Toronto police force to be a police officer was rejected because he did not meet the force's minimum height and weight requirements. Mr. Adler, at the time of application, was 5 ft. 6 in. and 108 pounds; at the time of the board hearing he was 5 ft. 6 in. and 120 pounds. When he applied, women were successful in meeting the height and weight requirements if they were 5ft. 4 in. and 110 pounds. Mr. Adler felt a man should not be put to the more stringent standard of 5 ft. 8 in. and 160 pounds.

The inability of the commission to arrive at a satisfactory settlement of the case prompted a recommendation to appoint a board of inquiry.

The board was heard together with the case of Ottawa Board of Commissioners and Ottawa Police Chief L. Seguin, and A. Colfer and C. McAdam. Under the chairmanship of Professor Peter Cumming, Osgoode Hall Law School, York University, the board found the Metropolitan Toronto police force had not discriminated against Mr. Adler because of his sex by having dual standards for male and female applicants.

The board arrived at this decision in the following manner. It did not consider the question of whether minimum height and weight requirements are meaningful or important criteria in the recruitment process of police officers.

It admitted that: "...it is difficult to justify why a male applicant, as Mr. Adler, who fails to meet the minimum standard for males but can meet the minimum requirements for females, should be precluded from

consideration. If a female applicant can perform the tasks of police officers, why can't the male applicant who is taller and heavier?" (The board noted that Chief Adamson was asked this question, but did not answer it.) Having decided that "...the reasonableness of the minimum height and weight requirement is not an issue" the board then argued:

"Mr. Adler was subjected to a different, more stringent and onerous provision than female applicants simply because he was a male applicant.... In most cases, a finding of discrimination would easily follow from the simple facts of differential treatment because of sex, to the complainant's disadvantage. However, on closer scrutiny, it is important to realize that female and male applicants to the Toronto police force, as groups, are treated equally. No matter what the gender of an applicant, she or he is measured by reference to the statistical "average" height and weight of the applicant's gender. Neither gender is put at a disadvantage *vis-a-vis* the other gender In fact, the utilization of a single size standard, no matter how relaxed it might be, would arguably always discriminate against women because of the difference in the statistical averages and the resulting disproportionate effect in exclusion to women through the application of a uniform standard."

Hence, the board decided that there was no discrimination against the complainant because of his sex within the meaning of section 4 of the Ontario Human Rights Code.

It is important to note that the board prefaced this decision with the words:

"...there is no issue in the case before me as to discrimination on the basis of race. It is an entirely different question for consideration (and a matter not considered here) if and when the issue is that a minimum height requirement has a disproportionate effect upon any particular group whose ancestry results in their being, on the average, shorter than the general population, or, at least, than the Caucasian sector of the general population. I make no comment upon that issue as it is not before me."

Community, Race and Ethnic Relations Unit

The Community, Race and Ethnic Relations Unit was established in 1976 to respond to the increasing tension and conflict originating from race and ethnic relations in our society. The program has two objectives: a) to reduce community tensions and conflicts through mediation and b) to prevent community tensions and conflicts from developing by devising strategies to prevent their occurrence. An increasingly important component of tension-prevention projects is the Public Education Program of the commission. The direction of the staff's community relations and public education work has evolved to the point where they spend a greater proportion of their time on major projects, under the policy direction of the commission's special committee. The 1,092 community relations activities during the fiscal year included 211 tension or conflict mediations, 598 consultations and 283 liaison and contact development meetings.

The staff works with the police, schools, labour, industry, neighbourhood groups, media, community organizations and social service agencies in their relationships with minority groups and women in order to develop programs aimed at resolving and preventing community problems.

In cases of community tensions involving racial or ethnic friction, the unit's staff acts as a mediator or facilitator in opening the lines of communication among the various parties. The human rights officer then attempts to reduce the points of contention and recommends ways and means of improving the situation. The unit provides assistance and advice to individuals, groups and institutions in an effort to assist them in developing their own mechanisms to mediate conflicts and respond to community tension. Among those who have been assisted are: Urban Alliance on Race Relations, Peel Inter-Community Relations Association, Indian Friendship Centres, community legal aid services, social planning councils and public housing authorities. Assistance included recommending policy changes, suggesting new programs, developing staff training programs and organizing community relations committees.

The commissioners also assist staff with community relations and public education programs.

Members of the Sikh community in Brantford became concerned because of an apparent increase in racially motivated harassment and vandalism. After

one incident of vandalism, a Sikh attempted to detain a youth until the police arrived. A fight ensued between the Sikh and the youth resulting in an injury to the youth. The police charged the Sikh with assault causing bodily harm. The Sikh community felt that the police had not taken any action to end the racial harassment.

The human rights officer discussed the social issues with the police and arranged for extra police patrols in the area. Two meetings were organized involving the Sikh community, the mayor and the police chief. A human rights committee was formed and it serves as a forum for community concerns and liaison with the police. The committee meets every three weeks at the police station. As a result of this committee, several events such as picnics have been organized to improve relations between South Asian Canadians and white Canadians. No further racial harassment has been reported.

The commission was approached by several employers to mediate conflicts arising among their employees. Many of these problems revolved around racial and ethnic differences to which the staff responded by analyzing the conflict and proposing appropriate solutions. In one instance, the staff conducted mediation meetings with management and the union when complaints were received that racist slogans were being written on the plant walls. The employer issued a directive advising that disciplinary action would be taken, and had the slogans removed. The union discussed the incidents at a general membership meeting, and the practice was stopped.

The 1978-79 fiscal year witnessed continuing cooperation between the commission and police forces throughout Ontario. The staff and commissioners assisted the police in dealing more effectively with neighbourhood disputes, racially motivated assaults and acts of vandalism. The staff helped to develop and deliver formal pre-service and in-service race relations training programs designed to assist the police in serving the needs of the changing population. In addition, the staff has assisted both the police and the

minority community through its participation on various pilot police-community relations committees in strategic Metropolitan Toronto locations.

The commission and visible minority groups in Hamilton expressed concern about lack of police response to racial incidents. Hamilton Regional Police responded by establishing a community resource officer to liaise with community groups. The commission's staff officer consulted and cooperated with the police department's community resource officer on race-related neighbourhood complaints. Subsequently, the community resource officer was promoted to staff sergeant – crime prevention with a staff of 10 officers. This unit now handles all race-related neighbourhood disputes and continues to consult with community groups and the commission.

A resident of South Asian origin in Ottawa complained of harassment by local youths in the form of racial slurs, vandalism and annoying pranks. The staff contacted the local police who investigated and found three boys responsible for the activities. The boys and their parents apologized to the South Asian and offered to pay any damages. The South Asian declined the offer of money, but was satisfied with the apology and the work of the police.

The Community, Race and Ethnic Relations Unit is involved in a number of programs to improve school-minority group relations. The staff assists school boards in reducing the occurrence of racial or ethnic related incidents in the school setting, and in promoting a greater understanding of issues involving prejudice and discrimination. This assistance includes teacher-training programs, instruction in dealing with racial incidents, youth leadership projects and school-community relations committees. The staff continued its liaison with the Ministry of Education and assisted in reviewing curriculum materials and textbooks to ensure that both are free of stereotypes and bias.

Commission staff assisted the Subcommittee on Race Relations of the Toronto Board of Education in preparing a report on the improvement of race relations in Toronto schools. The subcommittee was established to consult with community groups and make recommendations as to what action the board of education and its teaching staff could take to combat the spread of racism. The subcommittee included representatives from the principals' association, teachers' associations, minority liaison groups,

community groups and the commission. Several community meetings were held and many briefs were received. The report prepared by the subcommittee contained 150 recommendations concerning the areas of employment, promotions, curriculum, system sensitivity, extracurricular activities and racial incidents. The report was approved by the board and has been adopted as policy. A full-time affirmative action coordinator has been hired to develop and conduct a program based upon these recommendations.

A group of black parents in Niagara Falls felt that their children received discriminatory treatment at their local school. The staff officer met with the Niagara South Board of Education and received its full cooperation. A meeting with the human rights officer, principal, teachers and parents and board of education officials was held. As a result, a staff training program was organized and a special panel discussion on black students was held at the school.

A daily newspaper serving a community which includes a large Native reserve printed a political cartoon for Canada Week which depicted a negative stereotype of Native People. The cartoon depicted a man in a big limousine passing an impoverished Indian family and saying to his chauffeur: "You'd think they'd have the decency to stay out of sight during Canada Week". The chiefs of Ontario brought this concern to the commission.

The newspaper subsequently published several critical letters to the editor. They featured an editorial explaining that the intent of the cartoon was to indicate that too many Canadians are like the man in the limousine. Furthermore, the newspaper sent an apology to the chiefs of Ontario and the commission. The chiefs of Ontario have since maintained contact with the newspaper in order to improve their relationship.

Both commissioners and staff met with many Native organizations in an effort to understand and resolve their concerns. This involved organizing a number of meetings with various institutions such as police and schools to develop a dialogue between these institutions and Native people and to sensitize the institutions to the needs of the Native community.

The staff, with the assistance of the commission's committee, has developed a series of public education programs designed to reduce prejudiced attitudes by sensitizing people to the principles of human rights. The public education component of the commission's work assists agencies and institutions so that they can effectively respond to the needs and concerns of minority groups in our society. The public education specialist is involved in developing an ongoing series of conferences, seminars, workshops, publications and audio-visual materials. Public education activities for 1978-79 totalled 505, including 20 major projects.

Commission staff, in conjunction with George Brown College and Sheridan College sponsored two conferences last year entitled "Am I Right?" These conferences, directed at employers in the Toronto-Burlington area, explained the provisions of the code and its implications for management and personnel. The two conferences were the fourth and fifth of a series, and the commission plans to use this as a model for other areas in Ontario.

In Thunder Bay, the human rights officer participated in four training seminars with the City of Thunder Bay personnel department. The officer discussed the code in terms of application forms, hiring practices and general discussion with 90 city management personnel. The sessions were well received and, as a result, the commission was consulted during the finalizing of some contracts between the management and union in order to ensure that human rights protection was built into the collective agreements.

The staff assisted school boards, principals and teachers in organizing workshops on understanding and accepting minority group students. Commissioners and staff participated with the Ministry of Education's Summer Leadership Development Program for Secondary Schools. This program, which had 96 high school students and eight teachers in attendance, is designed to sensitize teachers and students to the problems which arise in a multiracial, multi-ethnic school setting.

Staff members also lecture regularly at secondary schools, community colleges and universities, particularly in courses relating to personnel, management and law enforcement.

The commission assisted two community groups in organizing a half-day human rights workshop for principals with the Etobicoke Board of Education. The workshop was based on the responses of the principals to a questionnaire on race and ethnic relations in the school system. As a result of these responses, the workshop focused on resolving inter-group conflicts.

The commission's staff participated in in-service lectures for the Ontario Police College, Ontario Provincial Police and several police departments. Plans are ongoing to design a joint commission-Ontario Police College committee on human rights education.

The staff designed and delivered a human rights in-service training program for the Ontario Provincial Police junior command. The course, which involved 150 participants, is part of the training that OPP constables participate in to develop them for promotion. Three sessions were developed to familiarize the participants with the aims and objectives of the code and how to improve police-minority relations.

As a result of a conflict arising between black residents and certain officers in the Windsor Police Department, a series of human rights training programs was given to every member of the Windsor police force by the commission staff. Since the training sessions were given, there has only been one complaint of police misconduct involving visible minority residents. Furthermore, the Windsor police force has developed a liaison with various ethnic communities in Windsor.

The commission staff continued its involvement in a major race relations training program directed at every member of the Metropolitan Toronto police force. Commissioner Ubale was instrumental in developing this course prior to joining the commission. In addition, staff officers designed and delivered a human rights in-service training program for the Durham Regional Police Department.

The staff in the northern Ontario and Toronto regions were also instrumental in organizing human rights conferences. In 1978-79, the commission

sponsored a Native-non-Native Awareness project in Kenora. A conference was held with the objective of improving the understanding of the cultural environment of the Native people so that social service agencies could better serve the Native community. The participants included schools, police, children's aid societies, unions, hospitals, churches, Ministry of the Attorney General's Native Community Branch, Grand Council Treaty #3, and other Native organizations.

Following the conference, the participants agreed to develop a network of communication among all agencies and organizations, both Native and non-Native, in the Kenora area. This will enable a comprehensive and cooperative approach to resolving problems affecting Native people in the areas of education, social services, health care services and employment opportunities.

The Sudbury staff assisted the Sudbury Human Rights Committee in organizing and conducting a Human Rights Conference. The purpose was to raise community awareness regarding human rights legislation and issues. Participants included representatives from the Canadian Civil Liberties Association, Canadian Human Rights Commission, labour, religious organizations, lawyers, and community groups as well as the commission. There were 183 participants who attended workshops on education, labour, the disabled, senior citizens, women, children and French-Canadians.

As a result of this conference, the Sudbury Human Rights Committee has increased its membership and is expanding its work in the area of teaching human rights in Sudbury schools.

A suburban area in Metropolitan Toronto with several Ontario Housing projects experienced an increase in the number of visible minority residents. In previous summers, teenage racial violence had occurred and therefore several youth workers were hired for the summer in an effort to prevent a recurrence of racial problems. Commission staff organized a workshop for the youth workers to assist them in resolving and preventing racial conflicts among teens, and to encourage them to develop social and recreational programs to service the needs of all groups in the area. The workshop was favourably evaluated by all participants and there were no major racial conflicts during the summer.

The Social Services Unit of the Native Canadian Centre invited the commission staff to conduct a workshop on human rights and the work of the commission. The staff organized a two-hour seminar, which familiarized the Native Centre's personnel with the commission's operations. As a result, an effective referral process of Native complainants to the commission has been instituted.

The commission staff organized and conducted a race relations training program for security guards who work in Ontario Housing developments. Five four-hour workshops involving 80 security guards were presented. These workshops featured role-playing activities, case-study analysis, and discussion on race-relations issues facing security guards of multiracial communities. The series of workshops was favourably evaluated and a dialogue has continued.

One of the human rights officers responded to a request by the Ontario Region of Girl Guides of Canada for assistance in developing material to be used by its trainers. This material would be helpful in promoting better race relations among staff and members of the Girl Guides. The officer consulted with the Girl Guides program director and developed a session concentrating on the theme of "Respect for Self and Others." One of the main features of this workshop was some group problem-solving of inter-group conflicts. The workshop was well received and subsequent requests for the resource materials have been made by other interested organizations.

Statistics

Activities	Type of Case			Formal Cases by Social Areas	
		1978-79	1977-78	1978-79	1977-78
Cases closed	Formal	659	934	Signs and notices	1 1
	Informal	181	98	Services and facilities	39 74
Total		840	1,032	Housing	34 77
Inquiries and referrals		18,306	17,202	Employment	568 859
Community, race and ethnic relations		799	951	Reprisals	10 12
Public education		798	2,003	Section 13(3) – filed on behalf of someone else	7 9
				Total	659 1,032
Inquiries and Referrals 1978-79					
Calls					14,471
Visits					2,442
Letters					1,393
Total					18,306
Subject of Inquiry					
Housing					916
Employment					4,997
Services and facilities					1,005
Advertising					403
Application forms					770
Information on code					3,050
General information					1,460
Referrals to other agencies					2,887
Other					1,622
Consultations					881
Code review					351
Total					18,306
Disposition of Closed Formal Cases 1978-79					
Disposition		Total	% of cases closed		
Settled		568	86.2%		
Boards of inquiry		6	1.0%		
Dismissed		42	6.4%		
Withdrawn		43	6.4%		
Total		659	100.0%		
Boards of Inquiry					
		1978-79	1977-78		
Hearings appointed		19	16		
Hearings completed		6	12		
Finding for complainant		4			
Finding for respondent		1			
Settled at hearing		1			
Formal Cases by Grounds					
		1978-79	1977-78		
Race and colour		373	510		
National ancestry		45	133		
Sex and marital status		148	233		
Creed		34	29		
Age		53	72		
Section 13(3) cases filed on behalf of another person		6	65		
Total		659	1,032		
Community Relations Activities					
Community meetings					227
Conferences					20
Consultations					305
Community contacts					283
Displays					6
Tension reduction projects					193
Tension prevention projects					18
Mass mailings					3
Public education projects					25
Panel discussions					8
Planning meetings					66
Press interviews					183
Radio – T.V. appearances					28
Seminars, speeches					202
Workshops					30
Total					1,597

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Ontario
Human Rights
Commission

Annual Report of the
**Ontario Human Rights
Commission**

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Honourable Robert G. Elgie, M.D.
Minister of Labour



Dorothea Crittenden
Chairman

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Ontario Human Rights Commission 1979-80

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*Chairman
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Bhausaheb Ubale

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Chairman's Remarks

I am pleased to present the second annual report of the Ontario Human Rights Commission, covering the Fiscal year 1979-1980. This report highlights some of the important work that the commission has done in the past year. In a pluralistic society, equality of opportunity is perhaps too narrow an objective; unless it is accompanied by equality of respect for the different cultural and racial groups of which that society consists. What we should strive for in Ontario is equal opportunity in an atmosphere of mutual acceptance and understanding. I hope that this report will encourage all of us to play our essential role in creating a society of mutual respect and harmonious interaction.

This past year has been one of the most dynamic and progressive in the commission's history. A weekly case review panel of three commissioners was instituted. The panel ensures that every victim of discrimination receives a remedy and settlement that reflects the nature of the injury suffered. The settlement also seeks to achieve preventive measures to ensure future compliance with the provisions of the Ontario Human Rights Code, since a vital objective of the commission is to further the public policy of equality of opportunity in all areas of daily life within the commission's responsibility. This new procedure ensures that each party to a dispute receives fair and equitable consideration. Each complainant is also requested to indicate in writing his or her satisfaction with the settlement before the case is closed.

Bhausaheb Ubale was appointed as our first commissioner responsible solely for the sensitive problem of race relations in our society. This reflects a growing concern respecting racial tensions in the community and is an attempt to find solutions to the increasing phenomenon of racial conflicts. Under Dr. Ubale's guidance, the commission has been instrumental in resolving racial disputes in the community as well as developing educational strategies to prevent racial tension and conflicts.

Another major area of concern is sexual harassment in the workplace. An increasing number of women are bringing forth complaints of this nature. Because of the complexity and sensitivity of these cases, the commission made a thorough review of our

investigation procedures in this area. As a result, our investigation techniques have improved and monetary settlements have greatly increased. Many women received several thousands of dollars in general damages and compensation for lost wages after filing sexual harassment complaints with our commission.

In the past fiscal year the commission appointed 25 public Boards of Inquiry. This represents more public hearings than in any other year in the commission's history. I believe that this indicates the commission's firm policy to expose and significantly reduce discrimination in this province.

I wish to express my deep admiration and gratitude for the tremendous efforts and quality of work of our staff. Our staff has coped with an increasing workload in an area of endeavour which requires both hard work and excellent human relations skills. The province is well served by these dedicated people.

The most important aspect of human rights legislation is the cooperation and goodwill of all people so that everyone can be treated with equality and dignity despite the manifold differences between individuals. We are living in a complex and stressful society. No human rights code or commission can be expected to create a society of equality and social justice on its own. If legislation is to succeed in this area, it must be reinforced by deliberate programs of voluntary action by government, business, industry, community organizations and individuals. Legislation and voluntary actions are strengthened by each other. The answer lies within the hearts and minds of every Ontario resident to translate the intent of human rights legislation into practice.



Dorothea Crittenden
Chairman

Role of the Ontario Human Rights Commission

The Ontario Human Rights Commission is headed by the chairman, Dorothea Crittenden, the vice-chairman, Rabbi Gunther Plaut, and at present has eight other members. One of these members, Dr. Bhausaheb Ubale, was given the additional responsibility this year of being the Race Relations Commissioner.

At each monthly meeting, the full commission reviews the decisions of the case review panel plus the formal complaints in which a settlement was not achieved. This year unsettled cases accounted for a quarter of all complaints of discrimination which fall within the commission's jurisdiction. In accordance with section 14a-(1) of the Ontario Human Rights Code, the commission then recommends to the Minister of Labour whether or not a public Board of Inquiry should be appointed.

Commissioners are responsible for reviewing requests for exemptions from the provisions of the code. The commission may grant or deny an exemption based upon the evidence underlying each request. For example, an exemption was granted for the hiring of child care workers in a group home in order to maintain a reasonable balance of male and female role models employed as group home leaders. In general, each exemption is granted on a temporary basis and is reviewed periodically.

Policy decisions are taken and major issues are reviewed at commission meetings. This enables the commissioners to evaluate alternative strategies and decide upon appropriate courses of action to be undertaken by themselves or the staff.

Affirmative action programs aimed at expanding the pool of applicants from which an employer may choose may be approved by the commission. These special employment programs, which fall under section 6a. of the code, enable qualified but historically disadvantaged women and minority group members to enter the work force in jobs from which they have either been excluded or underrepresented.

A weekly panel of three commissioners was instituted this year. The panel reviews proposals advanced for the settlement of each case prior to closing. The panel may then recommend that the full commission ratify the panel's approval of the settlement, or it may refer the case back to the staff for further avenues of investigation or conciliation. The panel also requires that the complainant confirm in writing his or her satisfaction with the findings and the settlement.

The commissioners on the panel analyze patterns and trends of discrimination in Ontario as revealed in the complaints. When the panel notes a discriminatory trend or practice that suggests a change in the commission's policies and procedures, the panel recommends the appropriate changes to the full commission for its approval. In this process the

investigation and conciliation strategies are constantly reviewed and updated. When the panel observes a pattern of discrimination by a respondent or a sector of society, the commission then develops public education or affirmative action programs to address the problem.

The commission maintains close contact with other human rights agencies and organizations in Canada and throughout the world. This enables it to exchange information and study current issues and strategies. Commission representatives participated in the annual conferences of the Canadian Association of Statutory Human Rights Agencies, and the International Association of Official Human Rights Agencies. Furthermore, the commission meets on a regular basis with representatives from industry, labour, the media, law enforcement agencies, government, education, professional associations, social agencies, community groups, minority organizations, women's groups and religious institutions.

The commissioners themselves are experienced and respected men and women from various parts of Ontario. Their work, education and community activity backgrounds reflect the diversity of Ontario's society. The commissioners' position in the community helps them to understand human rights issues first hand, and to apply human rights policies and programs effectively.

The office of the chairman serves as a secretariat for the chairman and commissioners. It provides administrative functions and maintains and develops contacts with various community sectors. The chairman's office assists in researching, coordinating and implementing commission policy and activities.

Commission Activities

The Ontario Human Rights Commission conducted a study of the hiring and employment practices of first class dining rooms in restaurants and hotels throughout Ontario. The study found that males comprise the overwhelming majority of employees in first class dining rooms while women are overconcentrated as waitresses in coffee shops. The commission arranged a luncheon meeting with representatives of the Ontario Women's Bureau, the Ontario Council on the Status of Women and major representatives of the hotel, restaurant and tourism industries.

At this meeting, the commission presented a summary of the report and outlined its concerns regarding the lack of women recruited for and working in first class dining rooms. The hospitality industry representatives agreed to inform their members of their obligations under the Ontario Human Rights Code and to explore the possibility of developing training and affirmative action programs. The Ontario Women's Bureau Affirmative Action Unit has undertaken to conduct follow up work in conjunction with the hotel and restaurant association representatives. This follow up includes public education activities with hotels and restaurants, assisting in affirmative action involving the recruitment and training of women and organizing a joint committee to deal with equal opportunity employment in the hospitality industry.

The commission arranged a series of meetings with representatives of the advertising industry to discuss the role of visible minorities in advertising. The Elkin Report of 1971 and a report by the Secretary of State in 1978 both found that visible minorities are under-represented in advertisements and when they are used in ads they are often portrayed in stereotypical roles.

A committee was organized to discuss strategies to resolve the problem. The commission is advocating that advertising should better reflect our multiracial society and it should portray women and members of visible minorities in the mainstream of life activities.

Throughout the year, the commission met with senior officials of the Ministry of Education. The Ministry of Education agreed to distribute copies of the commission's first annual report to every school in Ontario. It was also agreed that the commission would continue to assist the Ministry of Education in promoting human rights content in curricula and classroom materials and to eliminate bias and stereotypes from textbooks.

The commission held discussions with the editors of the major Toronto newspapers to analyze stereotypes in the press and to review the concerns of various minority groups that some articles and headlines have a negative impact on intergroup relations. The commission brought with them to these meetings a number of articles which they felt were offensive to the

spirit of human rights. The major newspapers expressed their general support of human rights principles and several have instituted measures to ensure fair and balanced reporting standards.

The commission is eminently aware that the media play an important role in influencing the racial climate and assisting in setting the moral tone of Ontario. The commission seeks the media's commitment to cover race relations issues sensitively. One particular newspaper took the initiative in this area by appointing a special staff person responsible for the "community relations" area and by opening lines of communication with the minority community in order to keep abreast of and sensitive to the special concerns that arise.

One of the commissioners, Chief Andrew Rickard, met with Native leaders throughout Ontario and compiled a report on problems facing the Native community. Chief Rickard's report examined the historical background of the Indian people in Canada. He then set out a directional plan for the commission to examine how the Native people of Ontario can be encouraged and supported to play an active role in Ontario's development and institutions. Chief Rickard also represented the commission at several conferences focusing on Native issues.

All the other commissioners participated in seminars and conferences which dealt with various aspects of human rights. These involved human rights in key sectors of society which included policing, role of religious institutions, the physically and developmentally handicapped, employment, the media and education.

Disposition and Settlements

The conciliation function is mandatory under Section 14.-(1) of the code, and it takes place after investigation of the complaint is reviewed as to substance.

Conciliation is a resolution-seeking phase designed to achieve a settlement and remedy that is generally satisfactory to all parties to the complaint – the complainant, the respondent and the commission itself.

While the commission concentrates less on the issue of legal guilt than on the issue of bringing about a fair and satisfactory resolution, the core principle of settlement is to restore the complainant to the position he or she would have enjoyed had the discriminatory acts not taken place.

It is also through the conciliation process that the commission attempts to ensure that the respondent to an employment complaint undertakes to eliminate any employment or business practices which deny equality of opportunity to persons protected under the code. Thus, this process performs an educative function.

Where investigation reveals no violation of the code, but where a misunderstanding between the parties or an unfair practice unrelated to the complaint has been found, the commission aims to clarify the basis for the misunderstanding, and to effect any changes in those practices or policies that may create a perception that unlawful discrimination is taking place.

Tables 1, 2, and 2(a) show the disposition of complaints and the remedies and settlements achieved in conciliation during 1979-1980, as compared with the previous year.

With regard to the disposition of complaints, the percentages of complaints which were settled, dismissed and withdrawn have changed significantly in the past fiscal year. In former years, the percentage of complaints settled had been from 87 per cent to 89 per cent, with the balance equally divided between dismissals and complaints withdrawn by the complainant. In 1979-1980, however, the percentage settled had decreased to 73 per cent of total, with dismissals increasing to 15 per cent. This reflects a recent tendency for respondents to be less amenable to settlement and for complainants to resist remedies which they consider to be inadequate. The trend suggests a hardening of attitudes on the part of respondents and a growing sophistication and awareness among minorities and women of their rights under the code.

The number of complainants who withdraw their complaints during the investigation process has also increased, which reflects the fact that more persons than formerly are taking action on their own to deal with the discriminatory conduct of employers and landlords.

Settlements achieved during 1979-1980 show a significant increase in the amounts received by complainants in compensation for earnings lost or expenses incurred because of discriminatory acts. A considerable proportion of monetary settlements during this period was made as compensation for the insult to dignity, and the pain and humiliation suffered because of discriminatory treatment. In 1979-1980, 71 out of a total of 529 complainants received a total of \$102,960 in compensation, as compared with \$57,094 for 41 out of a total of 659 complainants in the previous year. In addition, 98 complainants received offers of an available job, housing accommodation, or the public accommodation, service or facility that was denied.

Settlements embody the preventive as well as the remedial aspect. Therefore, a priority is placed upon consultations and human rights seminars with the

respondent and staff of the employment organization or business. Table 2 contains data on these preventive aspects of settlement.

Complaints of Discrimination in Employment

Complaints alleging employment discrimination continue to represent the largest proportion of cases, at 82 per cent of a total of 529, or 435 complaints. In 1978-1979, employment complaints totalled 568, or 85 per cent of the 659 complaints resolved (See Tables 3 and 3(a)).

The amount of compensation for earnings lost and out-of-pocket expenses incurred because of discriminatory treatment, as well as compensation for insult to dignity, showed a marked increase over the previous fiscal year in all complaint categories. With respect to employment complaints, a total of \$90,492 in compensation was received by 56 complainants, as compared with the amount of \$50,099 received by 39 complainants in 1978-1979.

In addition, 66 complainants were offered employment with the respondent company in a currently available position or the next available opening, as compared with 143 in 1978-1979. Forty-two complainants accepted these offers, the same number as in the previous year. The larger amounts represented in compensation for lost earnings, as compared with relatively fewer offers of employment in settlement, is due to the fact that more complainants had found alternative employment in 1979-1980 than in the previous year. Therefore, they would not tend to seek reinstatement or employment as part of a negotiated settlement (see Table 2).

In 72 complaints, the settlement included the employer's agreement that the commission's staff would conduct a human rights consultation or seminar with respondent employees. This is a decrease from the previous year when 132 employers made such an agreement.

Consultations include a systematic review of employment policies and practices, to identify those areas of the business operation containing elements which have an adverse effect on the hiring, training, promotion and working conditions of minorities and women. In some instances, employers used inadequate methods of recruitment and screening job applicants, did not provide written job descriptions, and lacked fair and consistent methods of job performance evaluation.

Such practices, they agreed, may allow for subjective and sometimes biased assessments of job candidates and employees, thereby permitting factors which are not related to job duties or performance to influence the employer's decisions. While the treatment of complainants may not be found to be discriminatory according to the provisions of the code, such practices frequently leave an impression in the minds of applicants or employees that they have been victim to discriminatory practices. Frequently, staff consultations will clarify genuine misunderstandings and problems of communication between the complainant and the employer.

Preventive consultations and enforcement strategies that address systemic discrimination, as revealed in employment policies and practices with an adverse impact on minorities and women, are designed to improve personnel practices and reduce the tendency for individual managers to exercise prejudice in decisions involving personnel recruitment, hiring,

promotion and terms and conditions of employment. An equally important objective is the removal of arbitrary and unnecessary barriers to employment when such barriers operate invidiously to discriminate on the basis of prohibited grounds.

Today, pervasive discrimination is less the result of isolated acts by individual wrongdoers that affect individual complainants; it is to be found in the operation of employment systems that adversely affect large numbers of minority group members and women. This kind of discrimination is seen more in terms of its consequences and impact, being less the result of the motive or purpose of the respondent.

The use of instruments such as employment tests and personality profiles in screening job applicants, is increasingly found in employment systems, particularly in the United States. However, such devices are becoming evident in Canada as well. It has been found that many employment tests contain a racial, ethnic or sex bias, which serve to screen out a disproportionate number of minority and women applicants. The skills tested for in these instruments are, in many cases, not related to performance of job duties and, in other instances, scoring is based on subjective assessment and allows the tester's prejudice to affect the rating of minority and women applicants.

In the case of *Griggs vs. The Duke Power Company*, the discriminatory impact of employment tests was at issue for the first time. For employment in previously all-white departments, candidates were required to hold a high school diploma and to pass two standard industrial tests. Because there is a smaller proportion of high school graduates among American Blacks for reasons rooted in historical discrimination and exclusion, the diploma requirement spread the effects of discrimination in education to the area of employment. The employer was unable to demonstrate that these requirements were related to successful performance of the jobs in question. This year, a board of inquiry was appointed to hear and decide the complaint of a male of Pakistani origin who believed that the entrance test he was given by an Ontario employer was designed in such a way as to permit a biased and subjective assessment of his qualifications and suitability for a clerical position.

The commission reviews employment tests and other personnel documents during the investigatory process, as well as in consultation with employers and personnel officials at their request. During 1979-80, staff reviewed 674 application forms and 301 print advertisements to ensure that they complied with the provisions of the code. The commission assists in the development of valid alternative means of examining competing applicants that will effect less disadvantage on minorities and women.

Discrimination in Housing and Public Accommodation, Services and Facilities

Although non-whites live in all parts of Ontario towns and cities, studies have shown that restrictive practices of landlords and real estate agents continue to result in less favourable treatment of visible minorities. The impact has become greater in a climate of competition for housing accommodation in a period of housing shortages, low vacancy rates, and high rentals, housing prices and interest rates. The cumulative effect of housing discrimination has important consequences as to whether or not minorities can be equal participants in

the work force, in education, and in other social and business activity. In 1979-1980, 34 complaints of housing discrimination were resolved, or six per cent of total (See Table 3).

Although this figure represents a very small proportion of the commission's caseload, it does not adequately reflect the many incidents of discrimination experienced by persons seeking to buy or rent housing accommodation. This is due to the fact that it is more difficult to detect and combat discrimination in the sale and rental of housing than it is in hiring and employment. A shortage of housing may encourage realtors and landlords to manipulate their marketing arrangements so as to exclude so-called "undesirable" occupants. Some landlords, for example, charge higher rents or impose restrictive conditions of occupancy with the intent of excluding members of minority groups. Such landlords will simply tell a minority applicant that the apartment has already been taken. Many victims of housing discrimination are not aware that such discrimination has taken place.

Section 2 of the code prohibits discrimination with regard to access to public accommodation, services and facilities, and discriminatory terms and conditions with respect to these services or facilities. Traditionally, this section was chiefly used by racial and religious minorities who were excluded from such public accommodation as hotels, resorts and restaurants, and from a relatively narrow range of services, for example, gas stations and barber shops. Recently, however, the application of this section has been greatly broadened, reflecting the social changes that have been evident in the past decade.

Among recent trends are a growing number of complaints from young girls who are denied membership on boys' amateur sports teams because of their sex. In two such complaints, complainants and the commission were successful at the board of inquiry, but the decisions were overturned on appeal by the respondent. Early this year, the commission sought leave to appeal these decisions in the Supreme Court of Canada, but appeal was denied.

Differential treatment on the ground of sex has been the subject of complaints from women denied access to "male only" beverage rooms in a number of Ontario cities. Although most of these complaints are resolved satisfactorily during conciliation, two boards of inquiry were appointed this year against taverns which had established sex-segregated facilities.

In recent years, the commission has received a growing number of complaints from women alleging discrimination with respect to public accommodation and facilities. This is due to the greater mobility of women who have entered the market economy in large numbers.

A number of complaints have alleged refusal of access to camp grounds on the basis of marital status. Many camp grounds have a "family" policy and will not admit single persons, or unrelated persons of the same sex travelling together. Although the code does not prohibit discrimination because of "family relationship" the commission nevertheless accepts and investigates such complaints within the framework of sex or marital status, in order to clarify the bona fides of the refusal.

Other complaints under Section 2 cite discrimination with respect to the policies governing admission to post-secondary educational institutions, and the terms

and conditions under which students are evaluated and promoted within a course of study.

Native persons who live in or near reserve communities are subjected to discrimination with regard to facilities offered by hotels, motels, shops, dining rooms and beverage rooms. Among the practices revealed in the investigation of complaints, in addition to outright refusals, are charges of key deposits and higher room rentals for Native clientele, their restriction to certain rooms or portions of the hotel or restaurant, and earlier check-out times.

Reprisals

Section 5 provides protection for persons who have reasonable grounds to believe they have experienced discrimination because they have named their employer, landlord, or other person in a complaint under the code. Also protected are persons who face reprisal action because they had taken part in any proceeding under the code, usually as witnesses who provide information concerning a complaint. This section was added because of the commission's experience that fear of reprisal, whether well founded or not, was often a strong deterrent to potential complainants and witnesses coming forward with a complaint or information with a bearing on a complaint.

Complainants who alleged discrimination against employers were particularly susceptible to thinly veiled threats of dismissal, or more subtle forms of coercion or differential treatment.

In 1979-1980, ten reprisals complaints were resolved. In the past three years, a total of 32 such complaints were handled, as compared with 23 in the period 1962-1977.

The increase in these complaints reflects the trend to discrimination to be increasingly systemic and pervasive throughout the employment organization. Many reprisals complaints are filed when an employee who has brought a complaint against the employer is subjected to penalties for small infractions of company rules, or experiences harassment from the employer or supervisor that is designed to force resignation. Others find that new employees are instructed not to discuss company policy with the complainant, who is labeled a troublemaker.

Grounds of Discrimination under the Code

Race & Colour

A comparison of complaints over the period 1974-1979 shows a marked increase in complaints based on race and colour. These complaints totalled 36 per cent in 1974-1975, and increased to 56 per cent in 1978-1979. Last year, however, the proportion declined to 41 per cent of all complaints, as Table 3 shows. However, these complaints continued to comprise the majority of all complaints resolved during 1979-1980, at 219 cases of a total of 529 complaints resolved.

The high percentage of race and colour complaints shown in commission statistics over time reveals that visible characteristics such as colour have always been salient in a decision to discriminate. There is a growing tendency in a period of high unemployment and a tight economy for differential treatment to be based on physical attributes, and for stereotyping and prejudice to be applied to members of non-white minority groups. Physical and distinguishable characteristics possess a dynamic of their own in determining the attitudinal and behavioural responses of the respondent group. This phenomenon is not evident in complaints based solely on nationality, ancestry or place of origin. In 1979-1980, such complaints totalled only 13 per cent of caseload.

Most complaints of discrimination in employment because of race and colour allege denial of employment, or dismissal. In 1979-80, 118 such complaints were resolved, or 21 per cent of all cases. A growing number of complaints cite discriminatory terms and conditions of employment and many of these allege racial name calling and harassment of visible minorities in the work place by co-workers or supervisors. If the employer has had knowledge of such conduct, but has not taken concrete steps to prevent it, the employer, as well as the offender, may be considered to be liable under the code. In such circumstances, the employer may be obliged to remove the cause of the discriminatory working conditions and to establish and monitor a prohibition against such humiliating conduct or language. When in receipt of complaints of this type, the commission seeks to engage the employer and employees in a human rights seminar and in consultations designed to identify the sources of racial tension, and develop strategies to prevent further occurrences. If there is a union or employment organization, it is also urged to participate in the design of these strategies.

Nationality, Ancestry and Place of origin

Seventy-one complaints, out of a total of 529 resolved in 1979-1980, alleged discrimination on the basis of nationality, ancestry and place of origin. A comparison of complaints over the period of 1974-1980 reveals a consistent decline in these complaints, from 21 per cent in 1974-1975 to the present 13 per cent.

In 1979-80, 23 complaints which constitute four per cent of total, were lodged by Native persons. Although this still represents a small number of all complaints, the figure is higher than in any previous year. Structural discrimination has rendered many Native groups uncompetitive in today's economy. Provisions of the code were designed to remedy discrimination against persons who can participate competitively in the work force, and they are therefore not adequate to address the pervasive discrimination affecting the Native

community, which has traditionally lacked uniform access to education, housing and employment opportunities. Thus, this group is caught in a vicious circle and the commission is attempting to break into a pattern of exclusion which has persisted for many decades.

The commission has therefore designed programs and strategies to promote a greater degree of equality of opportunity through efforts to eradicate the effects of past disadvantage. Chief among them are consultations and outreach among reserve communities and Native organizations which provide a variety of services to Natives who have migrated to urban centres.

Over one half of complaints received in the Kenora district office are lodged by Natives, primarily in the areas of housing discrimination and denial of public accommodation, services and facilities.

Sex

Complaints of sex discrimination totaled 177, or 34 per cent of cases closed in 1979-1980. Of these cases, 153 were lodged by females and 24 by males. This reveals a marked increase over 1978-79, when complaints based on sex comprised 23 per cent of total.

A large number of allegations of sex discrimination reveal continuing barriers against women in non-traditional jobs throughout the entire occupational spectrum. Most, however, relate to occupations and skilled trades in which women are under-represented, in spite of the fact that they possess the necessary qualifications and experience.

A considerable proportion of the increase in sex-based complaints is due to a rapidly growing number of complaints alleging sexual harassment on the job.

Within the past three years, reports of sexual harassment of women in the work place have increased dramatically. Public interest in this form of discrimination grew in the mid-1970's and the commission decided in 1977 to accept complaints from persons who had experienced sexual advances against their will while employed, or when seeking employment. These complaints are filed under Section 4-(1)(g), which prohibits discrimination "against any employee with regard to any term or condition of employment because of ... sex."

Complaints are accepted from males who allege sexual harassment by female superiors, but very few such allegations have been received.

Central to the concept of sexual harassment is the employer's or supervisor's use of coercion or intimidation in seeking sexual gratification from, or imposing sexual advances on, an employee in the course of employment. Employment-related consequences of refusing these advances may also appear in complaints, and many women have alleged that they were threatened with dismissal or the withholding of a promotion if they refused to accede to sexual advances.

The case load in this area has grown considerably since complaints were first received. In the first year, 1976-1977, 15 complaints of sexual harassment were resolved. In the fiscal year 1979-1980, 57 such complaints were resolved, and at year-end, there were 71 active cases still under investigation or conciliation.

The first board of inquiry in Canada to be appointed in a sexual harassment complaint convened in Toronto in

July, 1979. A settlement among the parties was reached before evidence was led at the hearing. A second hearing took place in Niagara Falls and Toronto in the spring of 1980, and the board of inquiry decided that although sexual harassment in employment falls within the purview of the code, a case of discrimination on the part of the respondent had not been made out.

Creed

Complaints alleging discrimination on the basis of creed totalled 26 or five per cent of cases resolved in 1979-1980. This marks a decrease from 1978-79, in which year 34 such complaints were resolved, although the percentage of total is the same.

Complaints of discrimination because of creed are increasingly citing an employer's refusal to grant the employee days off for religious observances. The most frequent conflicts involved employees who worship on a day other than Sunday, where the employer requires them to work on their Sabbath. Those refusing to comply with employer's attendance requirements have in some cases been forced to resign or have been dismissed.

In May 1980, a board of inquiry decided the complaint of a member of the Seventh-Day Adventist Church who lost her status as a full-time salesclerk with Simpson's-Sears when she was unavailable for work on her Sabbath, Friday evenings and Saturdays. The board of inquiry found that the employer had discharged his onus of demonstrating that to accommodate the complainant would work an undue hardship on the operation of his business. While cases of this nature have been litigated frequently in the United States, this was the first time in Canada that a board of inquiry decided this issue. The commission plans to appeal this decision to the courts.

Another trend of discrimination on the basis of creed is the denial of employment to members of the Sikh faith who wear turbans, beards and kirpans as part of their religious practice. Orthodox Sikhs must not wear safety hats in addition to or instead of the turban, which brings them into conflict with the provisions of existing industrial safety legislation. Efforts are now being made to research possible alternatives that would accommodate both religious beliefs and safe employment practices. A related issue is denial of employment to Sikhs who cannot wear a uniform cap, as required in certain public and security occupations. Here, settlements have included the employer's agreement that Sikh employees are not obliged to dispense with the turban and not wear the uniform cap.

In conciliation, the commission attempts to seek an accommodation between the right of the employee to practice his or her faith, and the employer's need to adhere to work schedules and to establish other employment policies such as a requirement to wear a uniform, according to reasonable standards of business practice.

If an employment regulation is neutral in its terms but has the effect of excluding a religious group, the employer must establish that the regulation is reasonably necessary to business operations. If it is not, the employer must try to accommodate employees' religious practices so far as reasonably possible.

Investigation includes a determination of what accommodations the employer is able to make, and the onus rests with the employer to demonstrate that

failure to accommodate the employees' religious practices would work an undue hardship on the business operation. The commission assists employers to develop reasonable guidelines for the granting of time off for holy days other than those on the Christian calendar.

Age

Research reveals that an increasing proportion of the active labour force is in the 40 to 65 age range, and that because of technological and organizational changes and an uncritical acceptance of the myth of the greater abilities of younger workers, a growing number of older workers were being denied an opportunity to compete on an equal basis for available employment in the 1960's. It was this fact which led to the enactment of the Age Discrimination Act in 1966.

Complaints alleging discrimination in employment against persons because of their age numbered 31, or five per cent of cases resolved in 1979-1980. This percentage has been fairly consistent since the Age Discrimination Act was passed. However, the number of such complaints over the past five-year period has decreased from a high of 72 in 1974-1975 to the present 31. During the 1970's, the commission began to receive a growing number of inquiries from young persons denied employment because of a preference among employers for older employees. Both of these tendencies reveal a pattern by which many employers establish arbitrary age standards which operate as barriers to all age groups.

Mandatory retirement at age 65, and even younger in some occupations, has further disadvantaged the older worker. In post-industrial societies, there is a trend toward economies that are more service-oriented, with white collar workers vastly outnumbering blue collar ones. In such societies, this places a premium on the acquisition of specialized knowledge, a process for which age is no barrier. Moreover, employment practices generally, are being adapted to the needs and desires of employees to break from traditional patterns of hours and days of work, training, transfer and working conditions. The concept of flexible retirement, where employees could choose to retire at the conventional age of 65, or remain working if they are able and competent to perform in their jobs, is currently being studied and debated as an alternative to compulsory retirement for everyone at age 65.

A small but growing number of employers and unions, particularly in the United States, have eliminated mandatory retirement and introduced flexible arrangements in which employees are permitted to retire before, or after, they reach the age of 65. In some instances, more sophisticated job performance evaluation systems and personnel planning strategies have been developed to ensure that

experienced and competent older workers are retained while still enabling the advancement of able younger employees. It is also possible to design pension plans that can be pegged at 65, and to provide for individual arrangements between employers and employees who retire before or after reaching that age.

Boards of Inquiry

If a complaint cannot be resolved to the satisfaction of the complainant, the respondent and the commission, the commission is obliged to recommend to the Minister of Labour whether or not a board of inquiry should be appointed.

The board of inquiry is appointed by the Minister under powers provided in Section 14a-(1) of the Code. According to Section 14(c), the board must decide whether or not any party has contravened the code. If the board finds a violation, it may order any settlement and remedy that constitutes full compliance, as well as rectifying any injuries suffered by the complainant. Remedies for injury are of two main types: those which compensate the victim of discrimination for lost earnings, for expenses incurred as a result of discrimination and, where appropriate, the offer of the position, housing, or public accommodation, services or facility that was denied; and monetary compensation for general damages.

The order may include affirmative action, as well as educative and preventive measures such as human rights seminars and consultations.

Another important function of the board of inquiry is educational. Hearings into allegations of discriminatory conduct create a forum by which the many forms of discrimination can be identified and held up to both legal and public scrutiny. Moreover, decisions are instrumental in the development of jurisprudence.

The number of complaints proceeding to boards has increased significantly over the past three-year period, as shown in Table 4. Of 25 hearings appointed in 1979-1980, 14 decisions have been received. The board of inquiry found for the complainant and the commission in seven of these, and four complaints were dismissed. Three were settled prior to the hearing.

Boards of Inquiry: Decisions 1979-80

Employment: Sex

Ed's Warehouse Restaurant and Muccilli

Miss Muccilli saw an advertisement in the Toronto Star stating: "waiters-waitresses for Ed's Warehouse Restaurant. See Mr. Simpson 4-5 p.m." Interested in the position, she telephoned to find out if she could be interviewed at a later hour, so she would not have to take time off from her present job.

When Miss Muccilli telephoned, she claimed that she was told that the restaurant does not hire waitresses. She enquired about the wording of the advertisement, and alleged that she had received the explanation that the term was a way of getting around the law.

The next day, Miss Muccilli filed a complaint with the commission under section 4-(1)(b) of the code, which states that no one shall refuse to employ any person because of sex. Although section 4(6) of the code allows for an exception where sex is a *bona fide* occupational qualification and requirement for a position, no attempt was made by the respondent during the board of inquiry to invoke this section.

During investigation, the commission officer was told by the respondent that women were not regarded as "suitable" for the job.

Since the commission was unable to reach a satisfactory settlement during conciliation, it recommended to the minister that a board of inquiry be appointed in accordance with the provisions of the code. The board of inquiry, under the chairmanship of Professor Bruce Dunlop, of the Faculty of Law, University of Toronto, convened on January 24, 1979.

Evidence was introduced that women in general and Miss Muccilli in particular were capable of performing the duties. Counsel for the respondent claimed that Miss Muccilli had not applied for the job because she had not followed instructions to appear between 4 and 5 p.m. The board of inquiry felt it was unrealistic to infer anything other than the fact that the man who answered her telephone call was a knowledgeable employee who was speaking on behalf of the restaurant when he informed her that women could not apply. Furthermore, the board of inquiry stated it was "difficult to imagine a potential job applicant persisting in appearing for an interview when faced with this kind of dissuasion."

The board found in favour of Miss Muccilli and the commission. In considering a remedy, the board referred to section 14c.(b) of the code which provides that the board:

"may order any party who has contravened this Act to do any act or thing that, in the opinion of the board, constitutes full compliance with such provision and to rectify any injury caused to any person or to make compensation therefor."

On the basis of the evidence presented, the potential income loss was fixed at between \$500 and \$600. The board, therefore, ordered that Miss Muccilli be compensated \$900 which included damages for the time and trouble involved in seeking redress. The respondent gave an undertaking not to breach the relevant provision of the code in future.

McIver and Lines Ltd., Walton and Ballesta

Ms Ballesta filed a complaint alleging discriminatory terms and conditions of employment because of her sex, when she had reason to believe that she had been sexually harassed by a co-worker at the work place.

Since she also believed that the employer had taken no action to correct her co-worker's behaviour, the company was also named in the complaint.

After the commission was unable to reach a satisfactory settlement during conciliation, it recommended to the minister that a board of inquiry be appointed in accordance with the provisions of the code. The board, under the chairmanship of Professor Peter A. Cumming, of the Faculty of Law, Osgoode Hall Law School, convened on July 31, 1979.

Soon after the board convened, the parties approached the chairman and informed him that they had reached an agreement. The board then made an order incorporating the following terms of settlement:

- The company was to deliver, immediately, to the complainant, a letter "expressing its regrets that any occurrence of the nature described took place." At the same time, the corporate respondent indicated its lack of awareness of the incidents complained of, until the receipt of a telephone call from the complainant's sister.
- The co-worker was to deliver, immediately, a letter to the complainant "apologizing for any humiliation or embarrassment that she may have been caused."
- The corporate respondent and the Ontario Human Rights Commission were to agree on a time when the commission could conduct a seminar at the company for the purpose of reviewing the goals and objectives of the Human Rights Code.
- The corporate respondent was to post on its premises a declaration of management policy to comply with the provisions of the code.
- The corporate respondent was to pay \$3,500 compensation to the complainant, including \$500 in lost wages and \$3,000 representing compensation for pain and suffering.

Metropolitan Investigation Security Canada Ltd. and Robertson

Ms Robertson had responded to an advertisement in the Thunder Bay Chronicle Journal, placed by Metropolitan Investigation Security Canada Ltd., seeking applications for the position of security guard. When she attempted to apply, she alleged that she was told the position was restricted to males only. She then filed a complaint with the commission, alleging discrimination in employment on the basis of sex, in contravention of section 4-(1)(b) of the code.

The commission's investigation revealed that Ms Robertson was well qualified for the job. The evidence also established that the sole reason for the respondent's refusal to consider her application was because she was female.

Since the commission was unable to reach a satisfactory settlement during conciliation, it recommended to the minister that a board of inquiry be appointed in accordance with the provisions of the code. The board, under the chairmanship of Professor Peter A. Cumming, Faculty of Law, Osgoode Hall Law School, convened on March 5, 1979.

The board of inquiry decided that the totality of evidence supported Ms Robertson's allegations. The decision further stated: "It seems from the evidence that Metropolitan employs both males and females as security guards, using that term in the broad sense. As well, it is clear that all employees are generally treated with equality insofar as working conditions and rates of pay are concerned. However, the exception is that

female persons are not hired for a relatively few positions or, if already employed, are not moved within their employment to those positions because Metropolitan views those positions as being unsuitable for female persons. These positions include, in the main, unfinished construction sites where patrolling is outside buildings at night, and patrolling about construction sites or buildings where the ground conditions make passage on foot awkward or even difficult. In adopting this approach, (the respondent company) is simply trying to be a protective, benevolent employer. The problem is that Ms Robertson was quite prepared, indeed preferred, to do anything and everything that a security guard might do. It is clear that a female can in fact perform the task of security guard, in all aspects of the job, as well as a male. There is no basis on the merits for making it a qualification or requirement of a specific function or task (such as open construction sites or patrolling outside buildings at night) that the guard be male and not female."

In coming to this decision, the board of inquiry also considered the interpretation of human rights legislation. In its words: "There is a consensus in board of inquiry decisions throughout Canada, that human rights legislation is remedial legislation to be interpreted quite differently from criminal law statutes. Boards of inquiry have held that human rights legislation must be interpreted fairly and liberally so as to ensure the attainment of the goals indicated in the statutory provisions."

In addition, the chairman cited further precedents supporting his contention that "In recent years, Canadian board of inquiry decisions have reflected the earlier American view that it is not necessary to find an intention to discriminate. The motivation of the respondent is not necessarily the determining fact." In this case, the board found that "Metropolitan clearly had the intent to discriminate, although it was well-intentioned insofar as its motivation to discriminate."

Referring to the fact that Metropolitan does not regard females as being suitable for some positions, the board of inquiry stated: "it is not open to the employer to decide that a prospective female employee should not take up an employment opportunity for which she is as capable as a male, simply because the employer prefers a male for the position open. This is discrimination because of the applicant's sex."

Having found a breach of the code, the board ordered the following:

- Metropolitan was to cease to contravene section 4 of the code in terms of present and future employees.
- The respondent was to pay the complainant \$750 in general damages and send her a letter of apology.
- The respondent was to send a letter of assurance of future compliance with the code to the Ontario Human Rights Commission.

Canadian Kenworth Company and Pocock

Mrs. Pocock filed a complaint against Canadian Kenworth Company, a division of Paccar of Canada Ltd., alleging discrimination in employment because of her sex, in that she had been the victim of discriminatory terms and conditions of employment, and was finally dismissed.

Since the commission was unable to reach a satisfactory settlement during conciliation, it recommended to the minister that a board of inquiry be appointed in accordance with the provisions of the code. The board, under the chairmanship of Professor Mary Jane Mossman, faculty of law, Osgoode Hall Law School, convened on September 6, 1979.

The order of the board of inquiry stated:

"The parties to this action, recognizing the desire of terminating these proceedings without the expense of further litigation, and noting that this complaint will be terminated without there being a finding that the Ontario Human Rights Code has been breached in any way, came to a settlement."

The parties agreed that, in spite of the fact that the respondent claimed no liability, it would pay the complainant \$9,600 as an act of good faith. Further, the respondent confirmed its adherence to the code in a letter to the commission by placing declarations of management policy to comply with the code on the premises. The company also agreed to co-operate with the Ontario Human Rights Commission in planning and conducting a seminar on the company's premises concerning the goals and objectives of the code, within 90 days of the date of the agreement. The respondent also provided a letter of recommendation to the complainant and had her file updated to outline her responsibilities, remuneration and seniority.

Ministry of Natural Resources and McKittrick

The complainant, Ms McKittrick, alleged discrimination in employment on the basis of her sex, by the Ministry of Natural Resources, in that she was denied employment for the summer as a student geologist.

Since the commission was unable to reach a satisfactory settlement during conciliation, it recommended to the minister that a board of inquiry be appointed in accordance with the provisions of the code. The board, under the chairmanship of Professor Larry Taman, Faculty of Law, Osgoode Hall Law School, convened on October 15, 1979.

When the board of inquiry convened, it was informed by the parties that they had resolved their dispute prior to the hearing. As a result, the board issued an order that the respondent comply with the terms agreed to, to send a letter of assurance of future compliance with the code to the Ontario Human Rights Commission and to post declarations of management policy to comply with the code in its offices. The respondent was further ordered to send a letter of apology to the complainant and to pay her the sum of \$3,000.

The Peterborough Board of Education and Offierski

Mrs. Offierski, a teacher and head of guidance at Kenner Collegiate Institute, alleged that she had applied three times between 1972 and 1975 to enroll in a principal's course (a necessary prerequisite to becoming a vice-principal) and was refused each time. She also alleged that, after applying and being considered for the position of vice-principal in 1978, she did not succeed in obtaining the position. She believed that all these instances were the result of discrimination on the basis of her sex, and filed a complaint with the commission against the Peterborough Board of Education, alleging a contravention of sections 4.-(1)(c)(g) of the code.

During the investigation, the commission learned that Mrs. Offierski was well-educated and possessed excellent professional qualifications. She had taught at the secondary school level for 12 years, and had held the position of head of special education at Kenner Collegiate for several years before being promoted to head of guidance in 1979. Moreover, Mrs. Offierski had performed many of the duties of vice-principal at the school from time to time, since the early 1970's.

The commission also established that Mrs. Offierski had applied on three separate occasions for the position of vice-principal. In 1972, the year of her first application, the principal had wanted her to serve as his vice-principal, but she did not have the formal qualification for the position without a Principal's Course Certificate.

With respect to the allegation that Mrs. Offierski had been denied admission to the principal's course because of her sex, the evidence revealed that she had been well-qualified, insofar as formal prerequisites were concerned, to take the course. However, the Peterborough Board of Education did not place her name on its list of selected applicants in 1972, 1973 or 1975.

Since the commission was unable to reach a satisfactory settlement during conciliation, it recommended to the ministry that a board of inquiry be appointed in accordance with the provisions of the code. The board, under the chairmanship of Professor Peter A. Cumming, Faculty of Law, Osgoode Hall Law School, convened on June 28, 1979.

In analyzing the application of the code to the complaint, the board of inquiry stated: "For the complainant to be successful, the first requirement is that she established a *prima facie* case of discrimination on the basis of her sex. To do this, she must show that she was qualified for the position for which she applied, that despite such qualifications, she was rejected, and that the position then remained open or was filled by a male with lesser qualifications." Upon establishing a *prima facie* case, the burden then shifts to the employer to provide an explanation that is reasonable.

The evidence showed that, generally, there were more qualified applicants for the principal's course than positions available. The board of inquiry found that, although Mrs. Offierski had very impressive credentials, the senior administrative staff of the board of education

did not believe that she should be given a position of administrative responsibility, and therefore should not gain admission to the course.

With regard to the allegation that Mrs. Offierski was denied promotion to vice-principal, the board of inquiry found that the denial of admission to the course effectively precluded her from eligibility for this position in 1975. By 1976, Mrs. Offierski was found acceptable for the course, but by then, given diminishing school enrolment and the high number of qualified applicants for the administrative positions in the Peterborough system, it had become more difficult to become a vice-principal. The only subsequent opening at the school, in 1978, placed Mrs. Offierski in competition with an exceptionally well qualified candidate, whose credentials and experience were superior to hers, in the opinion of the board of inquiry.

In spite of the fact that discrimination, as prohibited under the code, was not found in this case, the chairman felt obligated to include some additional remarks in his decision based on evidence presented during the hearing. He noted that two points can be made based on statistics of teaching staffs in Ontario in general, and in Peterborough in particular. "First, there has been a virtual absence of female principals and vice-principals in the Ontario education system and second, the Peterborough education system in particular, has had even fewer female principals and vice-principals."

In conclusion, the chairman commented on the wide support for the complainant among her colleagues and stated: "The complainant has demonstrated that she has the ability and desire to be a vice-principal and it would be to the disadvantage of the Peterborough education system if she were not able to continue to contribute so positively to the Peterborough community by having the opportunity to serve in new positions of responsibility, including that of being a vice-principal."

Employment: Race, colour, nationality

Northtown Ford Sales and Penk

Mr. Penk filed a complaint with the Ontario Human Rights Commission alleging he had been discriminated against in his employment because of his race, creed, nationality, ancestry and place of origin, in contravention of section 4.-(1)(b) and 4.-(1)(g) of the Ontario Human Rights Code. Mr. Penk had alleged that he was subjected to discriminatory terms and conditions of employment, and finally dismissed.

Since the commission was unable to reach a satisfactory settlement during conciliation, it recommended to the minister that a board of inquiry be appointed in accordance with the provisions of the code. The board, under the chairmanship of Professor Mary Ebets, Faculty of Law, University of Toronto Law School, convened on October 26, 1979.

Although the parties had reached a settlement prior to this date, the hearing was held to adopt the provisions of the agreement. The minutes of settlement stipulated that the respondent would pay Mr. Penk, without admission of liability, the sum of \$2,500. Also, the respondent agreed to write to the commission a letter of assurance of future compliance with the provisions of the code, and to post declarations of management policy of compliance on its premises.

Natural Footwear Ltd. and Ingram

Ms Ingram filed a complaint with the Ontario Human Rights Commission, alleging that the respondent, Natural Footwear Ltd. discriminated against her because of her race and colour, in imposing unfairly burdensome working conditions upon her, in refusing to give her a raise at a time when other employees in her area were given a raise, and finally, in dismissing her from a position which she had held for nearly four years. These actions were alleged to be in contravention of Sections 4.-(1)(b) and 4.-(1)(g) of the code.

Ms Ingram had been employed as a last puller on the finishing, lasting and packing operation of this shoe and boot manufacturing company. The 12 employees on this operation are responsible for the assembly of footwear which is a nine-step process.

In investigation, the commission was informed by the respondent that Ms Ingram's work performance had been good during the first three years of her employment with the company. However, disagreements had begun to develop between Ms Ingram and her supervisor in the fourth year, but the evidence provided by witnesses relating to the deterioration in this relationship was contradictory and inconclusive.

The commission also learned that several black employees, in addition to Ms Ingram, had been dismissed in recent times. These former employees indicated that they believed their dismissals were unwarranted.

The position taken by the respondent in conciliation was that the allegations were unfounded, and that Ms Ingram's services were terminated because she failed to discharge her responsibilities conscientiously and competently.

Since the commission was unable to reach a satisfactory settlement during conciliation, it recommended to the minister that a board of inquiry be

appointed in accordance with the provisions of the code. The board, under the chairmanship of Professor John D. McCamus, Faculty of Law, Osgoode Hall Law School, convened on October 11, 1979.

One of the allegations involved was the relative difficulty of the various tasks required in the assembly operation. Ms Ingram alleged that the last pulling function was the most difficult and onerous job on the line, and that she was required to work harder and more quickly than any other person in this unit. Because this was a central issue, the board of inquiry decided to visit the company premises and observe all the functions of this operation, in order to assist in the assessment of the testimony of witnesses at the hearing.

The parties agreed that the first three years of their employment relationship was completely satisfactory. However, Ms Ingram testified that she had been denied a salary increase following a dispute between herself and her foreman concerning vacation leave and time lost due to an injury. The respondent alleged, however, that Ms Ingram's work performance and attitude had deteriorated following her holiday.

The respondent testified that shortly after the salary increases had been awarded to several employees, Ms Ingram and her supervisor had a disagreement about her work production and performance during a period when a machine on her line had broken down. It was this incident which culminated in her dismissal.

Counsel for the commission introduced evidence concerning a number of other black employees whose services had been terminated, and who believed that their dismissals were unwarranted. Legal counsel argued that it is difficult to obtain direct proof of overt discrimination in employment cases. Therefore, the board of inquiry was asked to examine this evidence, since counsel believed that it suggested a pattern of discriminatory conduct by the company.

The board did not find that a pattern of discrimination had been evident in the company. Several former employees who are black had testified that they did not perceive a discriminatory atmosphere at the plant, and they did not feel that Ms Ingram's supervisor was a person who acted on the basis of discriminatory attitudes. He had dismissed 31 employees in total, and of these, only one was black.

Ms Ingram had alleged that she was denied a salary increase at Christmas time, when all her co-workers received a raise. The board of inquiry found, however, that of 13 employees in Ms Ingram's work unit, only four of them had received the increment. Ms Ingram was denied the raise because her work performance and attitude had deteriorated.

Following the board's observation of the operation of the line, it decided that the last pulling job involves the least amount of skill and is the fastest operation to perform. The employer, together with other employees, testified that Ms Ingram's work performance had deteriorated since the incident involving merit increases.

The board did not make a finding of discrimination. However, the decision stated in part: "It is no part of this decision that the supervisor was completely justified in imposing the sanction of dismissal on Ms Ingram. It is not beyond the realm of possibility that the deterioration in her work performance and general attitude was contributed to by insensitive handling by the supervisor, and by the apparently rather chaotic

administrative practices which prevailed at the plant. It is not surprising that in the absence of settled and written policies with respect to such matters as holidays and raises, Ms Ingram apparently suffered from misconceptions as to what the company practices and policies were... It is appropriate to observe that the absence of proper administrative procedures may give rise to the reality or the appearance of random and disparate decision making in the work place. In such an atmosphere, perceptions of favouritism and racial or ethnic discrimination are likely to develop, especially among employees who have been subjected to disciplinary measures."

The complaint was dismissed.

Fort Frances - Rainy River Board of Education and Snyker

Mr. Snyker filed a complaint with the Ontario Human Rights Commission, alleging discrimination in employment because of his nationality and place of origin under section 4-(1)(b) and 4-(1)(g) of the code. The evidence revealed that Mr. Snyker, a citizen of the United States who had been employed as a teacher for the board of education for 10 years, was terminated from his position in 1978 in accordance with a policy that "teachers will be declared surplus in the following order of priority: a teacher who is not a Canadian citizen, and a teacher who is not resident in Canada."

The complainant was a resident of a border city in Minnesota throughout his employment by the board except for two summers when he studied in Kingston. He had, however, obtained landed immigrant status while enrolled in college, prior to his first year of teaching, and was thereby eligible to accept employment in Canada.

Since the commission was unable to reach a satisfactory settlement during conciliation, it recommended to the minister that a board of inquiry be appointed in accordance with the provisions of the code. The board, under the chairmanship of Professor Edward J. Ratushny, Faculty of Law, University of Ottawa, convened on August 22, 1980.

Mr. Snyker's testimony during the hearing established clearly that he was qualified to teach and that he carried out his duties conscientiously. The two major issues dealt with by the board of inquiry were the definition of "nationality" under the code, and the applicability of the code to a situation involving a possible conflict with another Ontario statute.

It was argued by the board of education that the ground of discrimination prohibited under the term "nationality" does not encompass citizenship, and that "nationality" applies to country of origin. However, the board of inquiry decided that this argument fails to take into account the ground of "place of origin" under the code, and it was found that "nationality" includes the concept of citizenship.

The board of education also argued that the employment of teachers in Ontario is subject to supervision in accordance with the provisions of the Education Act and its regulations and, therefore, the code cannot be applied in Mr. Snyker's case. The board of inquiry had to determine whether or not there is a

conflict between the provisions of the two statutes, and if so, which one was to prevail.

The board of inquiry decided that the board of education was not required by statute or regulations to dismiss Mr. Snyker, and that, in his case, there did not exist any incompatibility between the code and other laws of the province. Indeed, the chief supervisory officer and the school principal had recommended that a permanent teaching certificate be granted to Mr. Snyker, in accordance with the requirements of regulation 199 under the Education Act.

Having found a contravention of section 4 of the code, the board of inquiry ordered the Fort Frances - Rainy River Board of Education to pay Mr. Snyker a sum equivalent to his 1977-1978 salary, together with the increase he would have normally received for the 1978-1979 contract year had he not been dismissed. In addition, the board of education was ordered to reinstate Mr. Snyker for the 1979-1980 contract year at the salary which he would have normally received if his employment had continued unbroken. It was expected that Mr. Snyker would repay the unemployment insurance benefits which he received during his period of unemployment.

The Hamilton Tiger-Cat Football Club Ltd., and Bone

Mr. Bone filed a complaint with the Ontario Human Rights Commission alleging that he had been discriminated against with respect to employment. In the complaint, he alleged "I am a Canadian and have reason to believe that I was refused the position of quarterback, denied training, made victim to the maintenance of an employment classification or category that by its operation excluded me from employment or continued employment, and discriminated against with respect to the terms and conditions of employment because of my nationality and place of origin in contravention of the Ontario Human Rights Code, Section 4-(1)(b), 4-(1)(e), 4-(1)(g)."

The complaint was based on the terms of the Canadian Football League's designated import rule. Each club in the C.F.L. is entitled to allow 33 players to dress for each game. Of these, 15 can be "imports". One of these, a substitute player, is referred to as a designated import. If the team wishes him to play he may take the place only of another import and that import is not entitled to take part in the rest of that game. The position of quarterback is exempt, however, and if the designated import substitutes for the quarterback, both players are entitled to continue substituting for each other during the rest of the game. As a result, Mr. Bone, a Canadian who plays quarterback, alleged that the rule offered an incentive to hire American quarterbacks. He felt he was thus prejudged by the then head coach, and was not afforded an equal opportunity with Americans to have his skills judged because he is a Canadian.

Since the commission was unable to reach a satisfactory settlement during conciliation, it recommended to the minister that a board of inquiry be appointed in accordance with the provisions of the code. The board, under the chairmanship of Professor John McCamus, of the Faculty of Law, Osgoode Hall Law School, convened on June 26, 1979.

Although the C.F.L. was responsible for establishing the designated import rule, Professor McCamus stated: "The C.F.L. was not added as a party to the proceeding before this board as the complaint did not allege that

the C.F.L. had acted in contravention of the code. Further, the C.F.L. did not seek to intervene in these proceedings."

During the course of the hearing, Mr. Bone recalled two incidents, among others, which led him to believe he was a victim of discrimination. He had been told that the Hamilton Club was considering him as a good candidate in the expectation that "if the designated import rule changed in a couple of years, they would then have an experienced Canadian quarterback." Also, Mr. Bone alleged, he was told during training camp that it takes a lot of courage for a coach to play a Canadian quarterback.

The board of inquiry found that the complainant was not accorded an adequate opportunity to demonstrate his ability at the 1978 training camp, and that this conduct was attributable to the application of a stereotyped assumption concerning the ability of Canadian football players. This was found to be in violation of section 4 of the Ontario Human Rights Code. The board of inquiry ordered the following terms of settlement:

- The Hamilton Tiger-Cat Football Club was ordered to pay compensation in the amount of \$7,000 to the complainant for the denial of a fair opportunity to seek placement on the 1978 Hamilton roster. (The amount was half what the Hamilton team originally felt it would pay Mr. Bone. The evidence showed that there was a 50-50 chance for Mr. Bone or one other quarterback candidate to make the roster. As a result, the chairman felt a good compromise would be to award Mr. Bone half of the \$14,000.)
- Compensation in the amount of \$3,000 was to be paid to the complainant for injuries to feelings and loss of reputation.
- The complainant was to be invited, as soon as reasonably practicable, to participate in a 5-day trial with the Club.
- The Hamilton Club was to approach the C.F.L. and/or its commissioner and seek release from the sanctions which might otherwise be imposed under paragraph 18 of Section 8 of the C.F.L. bylaws in order to extend the trial period stipulated for a period not to exceed one month.
- The Hamilton Club was to invite the complainant to its 1980 training camp and offer to enter into a contract of employment with the complainant for this purpose which will contain, at a minimum, the same terms and conditions as the June 1978 contract entered into between the parties, subject to any changes in the C.F.L. season and subject to the revision upward of remuneration, so as to reflect any increase in the cost of living occurring during the year.
- If, during the trial period stipulated above, Mr. Bone proves, in the opinion of the head coach of the Hamilton Club, to be superior in ability to the incumbents of, or candidates for, the quarterback position on the Hamilton roster, he is to be offered a position on the roster and must be subject to the appropriate terms and conditions of employment.
- The Hamilton Club was to establish a policy that for as long as the designated import rules, in their current form, are in effect, the rules do not offer an incentive for preferring import quarterbacks to more capable non-import quarterbacks.

Employment, marital status

The Catholic Children's Aid Society of Metropolitan Toronto and Blatt

Mr. Blatt filed a complaint with the Ontario Human Rights Commission, alleging that he was dismissed from his position as a child care worker because of his marital status, which he believed to be in contravention of section 4.(1)(b) of the code.

Mr. Blatt was hired because he was thought to be well qualified for the job, and discharged on the same day because, in giving information for pay and benefit purposes, he disclosed that he lived with his fiancée in a common-law relationship. The society found Mr. Blatt's living arrangements to be unacceptable because they were in conflict with the therapeutic milieu of the treatment program and were also in conflict with the society's position on marriage and family lifestyles.

During the investigation, the commission found no evidence that marital status was a bona fide occupational qualification or requirement for the position for which Mr. Blatt had been hired. However, the respondent informed the commission that Mr. Blatt's domestic arrangements were contrary to the moral standards and principles by which the Catholic Children's Aid Society is governed, and it was for this reason that he was considered to be unacceptable for employment.

Since the commission was unable to reach a satisfactory settlement during conciliation, it recommended to the Minister of Labour that a board of inquiry be appointed in accordance with the provisions of the code. The board, under the chairmanship of Professor Bruce Dunlop, of the Faculty of Law, University of Toronto Law School, convened on August 9, 1979.

During the hearing, the complainant testified that he would be perfectly willing to follow the teachings of the church in his dealings with the children in his care, and would not disclose to them the nature of his domestic arrangements. However, the society gave evidence that Mr. Blatt's personal arrangements did offend principles held by the church, although there was no formal rule of the society concerning the employment of personnel in such circumstances. The board also heard that Mr. Blatt's views on abortion offended principles espoused by the society, and his religious views were at variance with those motivating the society because Mr. Blatt was a Jew. However, these factors were not considered a barrier to hiring him because Mr. Blatt said that if faced with an abortion issue he would be willing to deal with it in a manner approved by the society, and he would feel perfectly comfortable taking boys under his care to church services.

Nevertheless, an official of the society held the opinion that Mr. Blatt's relationship would have a greater practical impact than other departures from church or society principle.

The board of inquiry then turned to the issue of whether or not there was discrimination on the basis of marital status. The board decided that the termination of Mr. Blatt's brief appointment was not based on his marital status, but was based on a moral judgment about his lifestyle. The decision stated, "while the board is not convinced that the complainant's lifestyle posed a greater impediment to his effective performance than other divergences from church

principle, the board must uphold the right of the society to apply its own moral standard".

The decision went on to state: "The Human Rights Code overrides moral judgments that are based on biased views about race, creed, colour, age, sex, marital status, nationality or place of origin where such judgments affect the individual's employment and accommodation rights. This is important to social policy. Though an interference with freedom in one sense, it is also fundamental to any kind of equality of the individual and hence is essential to freedom in a higher sense. But the code also tacitly recognizes that there is freedom to differ about many other moral issues, and that individuals and organizations are entitled to govern their conduct in accordance with their moral views even though they may not be accepted by the whole of society".

The board of inquiry then examined the interpretation of the term "marital status" and found that it did not apply to the common-law relationship. "The key to the society's objection is not that Mr. Blatt was married or single by any legal definition of the terms, but that he was living with a woman other than his wife. In the board's view, this is an issue of lifestyle or sexual morality, not an issue of marital status".

The complaint was dismissed, and the commission is appealing the decision of the board of inquiry to Supreme Court of Ontario Divisional Court.

Housing and commercial accommodation, race, colour, ancestry

West and Copenace

Mr. and Mrs. Copenance filed a complaint with the commission, alleging that their landlady, Mrs. West, had discriminated against them with respect to the occupancy of housing accommodation because of their race, colour and ancestry, in contravention of section 3 of the code.

The Copenaces, a Native Indian couple, had moved into a house owned by Mrs. West in December 1977. The rental arrangements were conducted by Mrs. West's agent, to whom the Copenaces paid their monthly rent. Several months before they took occupancy, a neighbour had complained to Mrs. West about the poor condition of the property, and the large amount of garbage that was piled around the house.

Three months after the Copenaces had moved in, they met Mrs. West for the first time when she called on them in the morning and again later in day. The Copenaces alleged that Mrs. West's manner became abrupt and unfriendly when she met the family face to face. On her second visit, Mr. Copenace's mother, his sister and her children were visiting. The Copenaces said that Mrs. West told them that the house was not supposed to be rented to Indians because the neighbours had signed a petition to this effect. She remarked: "when one Indian moves in, the whole tribe moves in." Mrs. West told the couple that unless the garbage outside the house were cleaned up, they would receive notice to move out. Mr. Copenace replied that the garbage was not theirs, and in any event, it was frozen to the ground and could not be moved at present. The couple claimed they were also told they were permitted visitors only on rare occasions.

On April 20, 1978, the Copenaces received an eviction notice from Mrs. West, who said that a building inspector had informed her that the house needed extensive repairs.

These events led the Copenaces to file a complaint alleging discrimination with respect to the terms and conditions of occupancy, and denial of housing accommodation, in contravention of section 3(1)(a) and 3(1)(b) of the code.

The evidence established that the allegations had been substantiated, and that the Copenace family had been excellent tenants.

When the commission could not reach a satisfactory settlement during conciliation, it recommended to the minister that a board of inquiry be appointed in accordance with the provisions of the code. The board of inquiry, under the chairmanship of Professor Edward J. Ratushny, Faculty of Law, University of Ottawa Law School, convened on September 20, 1979.

The board found that the incident involving the removal of garbage, and the warning about visitors, were the direct result of the race, colour and ancestry of the couple, and found the landlady to be in violation of section 3-(1) (b) of the code. Moreover, witnesses had testified that the Copenaces had made significant improvements to the interior of the house, and had kept it clean and tidy.

Evidence introduced at the hearing indicated that the building inspector did not issue an order to Mrs. West requiring repairs of the house until May 30. The board of

inquiry found, in the context of the relations between the Copenaces and their landlady, that the eviction notice was motivated by the fact that the tenants were Native Indians. The notice to vacate was found to be in contravention of section 3.-(1) (a) of the code.

In reaching this decision, the board of inquiry noted: "In the fall of 1978, Mrs. West was faced with at least one complaint about the previous tenants. They left her house in an appalling condition. They also left without notice and with the rent two months in arrears. They told her that they had only three children when there were five. In all these circumstances, Mrs. West came to the unfortunate conclusion that her problem was not with the particular tenants who had rented the premises previously, but with Native people, generally, as tenants. She instructed her agent that the house was not to be rented to people with children or to Indians."

The board of inquiry ordered the respondent to:

- Write a letter to the complainant and his wife, apologizing for her actions and offering to the couple the first available accommodation at the prevailing rent at any premises which she is offering for rent.
- To give written notice of any vacancy for a period of two years to the Ontario Human Rights Commission prior to any public advertisement of such vacancy.
- To permit the commission to monitor her rental practices during this period.
- To pay Mr. Copenace the sum of \$1,100 and pay a further sum of \$900 to Mrs. Copenace, in compensation for out-of-pocket expenses incurred because of discrimination and as general damages for insult to dignity.

Loconte and Blake

Mrs. Blake, a black female immigrant from Jamaica, is the active partner in a hairstyling salon business in Mississauga; having purchased the business in 1976. She leased her premises from Mr. Loconte through a third party. Mrs. Blake and Mr. Loconte had not met during the first month of Mrs. Blake's tenancy.

One month after the lease had been signed, Mr. Loconte visited the salon, and met Mrs. Blake for the first time. Mrs. Blake alleged that when Mr. Loconte met her face to face, he behaved abruptly and rudely toward her. She also alleged that she then overheard Mr. Loconte arguing with the former tenant, asking "Why you had to sell your business to a nigger, because I don't want to have anything to do with these people."

Mrs. Blake further alleged that the respondent attempted to harass her by putting the premises up for sale and showing the building at inconvenient times after he had met her for the first time. Also, she alleged that Mr. Loconte had been rude to her on two occasions when she had been late in payment of her rent. Mrs. Blake then alleged that Mr. Loconte demanded an increase in her rent from \$300 a month to \$675 a month, because he did not want her to renew her lease.

Mrs. Blake believed that these allegations were in contravention of section 3.-(1) (a) and/or 3.-(1) (b) of the code, which prohibit discrimination with respect to the

occupancy of any commercial unit because of race, colour, ancestry or place of origin.

Since the commission was unable to reach a satisfactory settlement during conciliation, it recommended to the minister that a board of inquiry be appointed in accordance with the provisions of the code. The board, under the chairmanship of Professor Peter A. Cumming, Faculty of Law, Osgoode Hall Law School, convened on November 8, 1978.

During the hearing, the former owner of the business confirmed that the respondent had appeared very upset after his first meeting with Mrs. Blake, and had asked him why he had sold his business to "such kind of race of people." On cross examination, Mr. Loconte admitted that he had used these words. The real estate agent who had negotiated the sale and purchase of the property also testified that Mrs. Blake had reported the incident to him on the following day.

With regard to the allegation that the respondent had put the property on the market in order to harass Mrs. Blake, the evidence indicated that it was first listed for sale shortly after she had moved in. The board of inquiry believed that the asking price had been unrealistically high, and the property remained unsold as of the date of the hearing. It was the board's opinion that although Mr. Loconte was prepared to sell the premises if he could receive a price above the market value, at least one reason for putting the "for sale" sign up and trying to show the property was to harass Mrs. Blake, whom he did not want as a tenant.

A further allegation concerned the manner of payment of rent. Mrs. Blake had made her payment late on two occasions, through understandable circumstances, and she testified that her landlord had been rude and resentful in these instances. The former tenant gave evidence that when he was late in paying his rent, he had found Mr. Loconte to be patient and understanding. The board of inquiry found that these events gave further support to Mrs. Blake's allegation that she was receiving discriminatory treatment because of her colour and racial origin.

The original lease was for a rent of \$300 per month, and a serious conflict arose on the expiry of the lease. Mrs. Blake received a letter demanding to know whether she wished to renew at a rental of \$675 per month. A dispute between the parties took place over what Mrs. Blake believed to be an unfairly high rental, and two months after renewal of the lease, it was agreed that Mrs. Blake would pay a rental of \$600 a month. The landlord had a bailiff seize the premises without warning, after the complainant had made a late payment of \$450 on her first month's rent. The board of inquiry found that the respondent's action concerning the terms of renewal were motivated by his discriminatory attitudes.

Further evidence introduced during the hearing concerned the question of whether or not the rental of \$675 a month was higher than the fair market rental value. The human rights officer testified that comparable rentals in the plaza were lower, with the

overall average being \$530 per month. The board of inquiry found that Mrs. Blake was being asked to pay the amount of \$50 in excess of the highest amount that the marketplace would have paid.

There was a finding that the respondent had discriminated against Mrs. Blake in his words and conduct toward her because of her race, colour, ancestry and place of origin, in contravention of section 3.-(1) (b) of the code. The board ordered the following terms of settlement:

- An award of \$800 in general damages for the injury to Mrs. Blake's feelings and dignity.
- Payment of \$209.80 in compensation for expenses incurred by Mrs. Blake because of discrimination.
- Payment of \$1,200 in compensation for the amount of \$50 rental in excess of the market value, for the period of 24 months on the lease.
- A continuing rental of \$550 per month for the balance of the renewed lease.

Public accommodation, services and facilities, sex

Orchard Park Tavern and McGuire

Ms McGuire and a male friend had been seated in an area of the Orchard Park Tavern that was close to the band. Because it was very noisy, they went to another area of the tavern separated by a light partition. When they attempted to order, they alleged they were told by a waiter that women could not be served in that section. The waiter further stated that the management had the right to designate a "men only" area. The couple then left the premises.

The next day, Ms McGuire phoned the Human Rights Commission to see if this policy was in contravention of the code. She was informed that it was an apparent violation, and therefore, she filed a complaint alleging denial of service in an area of the tavern to which the public is customarily admitted because of her sex, an act which is prohibited under section 2.- (1) (a) and (b) of the code.

The investigation substantiated Ms McGuire's complaint. The commission was told that waiters had been given instructions not to serve women in the "men only" section because the management had received complaints from women in the past about the rough language and conduct of male patrons in that part of the tavern. The management also indicated that the segregated area was established for the safety of the women themselves.

The commission was unable to reach a satisfactory settlement during conciliation. Therefore, it recommended to the minister that a board of inquiry be appointed in accordance with the provisions of the code. The board, under the chairmanship of Professor D.A. Soberman, Faculty of Law, Queen's University, convened on June 21, 1979.

The owner of the tavern did not dispute Ms McGuire's testimony during the hearing. He argued, however, that he had the "men only" area "for their own (women's) safety. We have had women back there and it is dangerous." Because of this, he felt it was the right of management to maintain segregated sections for male and female patrons.

The board of inquiry found this policy to be in violation of the code. The board also noted: "The complainant, Ms McGuire, is a mature woman with a university education. Her anger and annoyance seemed less concerned with the affront to herself personally than with woman's rights more generally. I believe she was more interested in seeing these rights vindicated than receiving a personal remedy. Even so, it is important that a citizen who is aggrieved through interference with her human rights as guaranteed by the laws of Ontario be compensated appropriately. Accordingly, I order the respondent to pay Ms McGuire the sum of \$100."

As well, the respondent was ordered to send a letter to the commission containing assurances of future compliance with the code, and to post a declaration of management policy of compliance with the code on the premises, both to be done within 90 days. It was further ordered that the commission may inspect the premises of the respondent during regular business hours for the next two years, to monitor the business practices which were subject of the complaint.

Court Cases, 1979-1980

The Borough of Etobicoke and the Ontario Human Rights Commission and Bruce Dunlop and Harold E. Hall and Vincent Gray

In 1977, a board of inquiry under the chairmanship of professor Bruce Dunlop of the Faculty of Law, University of Toronto, found that the Etobicoke Fire Department discriminated against Harold E. Hall and Vincent Gray on the basis of age, in contravention of section 4.-(1)(b) of the code. The complainants had lodged complaints with the Ontario Human Rights Commission when their employment was terminated at age 60.

The board of inquiry ordered that the complainants be reinstated, provided they "still possess the requisite physical and mental capacity to carry out their jobs."

Two additional complaints naming the International Firefighters Association, Local 1127 and the Etobicoke Professional Firefighters Association were not found to be valid because the Collective Agreement had provided for the retirement of firefighters at age 60 since 1973, and there was no causal connection between the activities of the Etobicoke Professional Firefighters Association and the establishment of a mandatory retirement age of 60.

In reaching this decision, the board of inquiry stated that the evidence did not establish age as a *bona fide* occupational qualification and requirement for the occupation of firefighters, and no specific age could be set down as the cutoff point beyond which there would be "a significant increase in the risk to individual firefighters, to their colleagues, or to the public at large."

The borough appealed the decision of the board of inquiry to the Supreme Court of Ontario Divisional Court, which heard the case on June 18, 1979. This court overturned the board of inquiry findings, saying:

"The evidence indicates that in agreeing to the 60 years limitation, and enforcing it, the Borough of Etobicoke honestly believed that it was doing that which was in the best interest of its firefighters individually and collectively, and of the public which they serve... An employer can establish that an age limitation requirement is *bona fide* without bringing forward scientific or statistical data to prove it, although, of course, such evidence is desirable if it is available... Where, at the request of firefighters themselves, often supported by elaborate briefs as to why retirement at age 60 should be required, 85 per cent of the Collective Agreements in Ontario under which firefighters are employed provide for a mandatory retirement at age 60, that fact in itself is strong evidence that mandatory retirement at age 60 is a *bona fide* occupational requirement for firefighters."

The court therefore allowed the appeal, and set aside the decision and order of the board of inquiry.

The Ontario Human Rights Commission sought leave to appeal this decision to the Supreme Court of Ontario Court of Appeal, but leave was denied.

The Ontario Rural Softball Association and the Ontario Human Rights Commission and Brent Bannerman

On June 26, 1978, the Supreme Court of Ontario Divisional Court heard an appeal from the decision of a board of inquiry held in accordance with section 14a.-(1) of the Ontario Human Right's Code, which ordered that the Ontario Rural Softball Association cease to provide sex-segregated divisional softball playoffs for children 11 years and under.

The board of inquiry, which was first convened in April 1977, was chaired by Professor Sidney N. Lederman, Faculty of Law, Osgoode Hall Law School. A complaint alleging a contravention of section 2 of the code had been lodged by Brent Bannerman, coach of the Waterford Squirt All Star Softball Team, on behalf of nine-year-old Debbie Baszo, who had been declared an ineligible member by the association because of her sex.

The divisional court overturned the decision of the board of inquiry on the ground that the association, which was established to provide an organized system of softball playoffs among Ontario communities, offered a facility open to teams composed of either girls or boys, but did not offer a facility for integrated softball.

"An integrated team was not eligible to take advantage of or to utilize the facility made accessible by the association," the decision stated. The court therefore decided that the refusal to grant Debbie Baszo a playing card did not contravene the code. The appeal was allowed, and the decision of the board of inquiry was set aside.

The Ontario Human Rights Commission appealed this ruling, and the case was heard by the Supreme Court of Ontario Court of Appeal on May 24, 1979.

In a majority decision, J.A. Weatherston argued that the appeal should be dismissed, and stated: "The code differs from most other statutes which have a similar purpose in that it refers to 'accommodation, services or facilities available in any place to which the public is customarily admitted', instead of to 'accommodation, services or facilities which are available to the public...'. There will be no offence committed if the accommodation, service or facility is so described that... it is made to a limited class of persons.... Where, as here, there is a manifest attempt (of the association) to achieve fairness in competition among teams in the series and where, to achieve this end, some discrimination because of sex is inevitable, I do not think it is an offence if sex is merely one of the general criteria for dividing players amongst the several series. The real reason for the separation of boys and girls is overall fairness. It is not sufficient to show that in a particular case sex is not a relevant criterion."

The other majority decision prepared by J.A. Houlden, found that the activities carried on by the association are not services or facilities within the meaning of section 2 of the code. "If it was intended to apply the code to the activities of bodies such as the Ontario Rural Softball Association, I think that the legislation should do so in clear unequivocal language. I am unable to find such language in section 2.-1(a).

In her minority decision, J.A. Wilson examined the availability to the public of an accommodation, service or facility. She stated: "With respect, I do not think it was open to the learned chief justice to read words into the section. The legislature did not limit the accommodation, services or facilities covered by the section to those which are available to the public.

Complaints of Discrimination

Availability to the public is relevant under the section only with regard to the place in which the services or facilities are being provided. I think therefore that the learned chief justice may have erred when he concluded that the place for the activity as carried on is not the dominant factor but rather the service or facility available... The effect of section 2, in other words, appears to be to ban discrimination in public places... There is no suggestion that Debbie Baszo did not meet all the other tests of eligibility for the playoffs. She was refused registration simply because she was a girl. Her case seems to me therefore to be on exactly the same footing under the section as the case of a boy denied registration by the Ontario Rural Softball Association because he is black."

The Ontario Human Rights Commission sought leave to appeal the decision of the Court of Appeal to the Supreme Court of Canada, but the application for leave was denied.

The Ontario Minor Hockey Association and the Ontario Human Rights Commission and Dorothy Cummings

A Board of Inquiry appointed under Section 14a-(1) of the code found that Mrs. Cumming's daughter, Gail, was denied accommodation, service or facilities on account of her sex by the Ontario Minor Hockey Association, when she was declared ineligible to continue playing on the Huntsville All Star team. The board of inquiry, which was heard in 1977, was chaired by Professor Mary Eberts, Faculty of Law, University of Toronto Law School. It ordered the association to invite Gail Cummings to try out for the Huntsville team for the current year, and that she be accepted if she should be judged able to meet the relevant standards of competence. The association was also ordered to accept for registration any able and competent female player.

The association appealed this decision to the Supreme Court of Ontario Divisional Court, which heard the case on June 20, 1978. The court allowed the appeal, and set aside the ruling of the board of inquiry.

The decision stated: "If the accommodation, services or facilities are not available to the public in the sense that they are not open to the public generally, although provided in a place to which the public is customarily admitted, then they fall outside the ambit of the code... In my view, Professor Eberts erred in concluding that the facilities of the Ontario Minor Hockey Association were open to the public ... A reasonable view of the activities carried on by the association discloses that it... is a facility capable of being used by boys only..."

The Ontario Human Rights Commission obtained leave to appeal the decision to the divisional court, and the Supreme Court of Ontario Court of Appeal heard the case on May 24, 1979.

The court decided that no offence has been, or could be, committed by the Ontario Minor Hockey Association because it is not a "person" within the meaning of section 2 or section 19.-(h) of the code, since it is not an incorporated entity. Accordingly, the appeal was dismissed.

Complaints of Discrimination in Employment

• The complainant, an East Indian of the Sikh faith, alleged that he was discriminated against in employment because of his creed when he was dismissed from his job in a Southwestern Ontario city because he would not wear a hard hat. Sikhs are required to wear a turban as an integral part of their religious faith and practice.

During investigation, the respondent supplied data relating to accidents and injuries among his employees resulting from improper safety equipment. The requirement to wear safety clothing is based on the provisions of the Industrial Safety Act as well as the safety regulations established by the union.

The employer had proposed that the complainant use headgear that could be worn with the turban. However, the complainant's religion did not permit him to wear headcovering in addition to the turban. Various Sikh groups supported the legitimacy of the complainant's refusal to wear any type of additional or alternative headgear. The employer then offered him employment in a job where safety equipment was not necessary, but he was unable to work during the hours of the shift that was offered to him. Although the complaint could not be settled in conciliation, the commission did not recommend the appointment of a board of inquiry. It did note, however, that it would recommend to the Minister of Labour that he continue looking into possible means of an accommodation between the Sikh religions beliefs and statutory safety requirements.

• A man from Western Ontario, who was 40 years old, alleged that during a job interview the respondent made continual references to the need for a younger man to fill the position of production clerk.

During the investigation, the respondent did admit that he had referred to a "younger man", but only in connection with another person the company was considering for the same position. The respondent claimed that the complainant was rejected on other grounds, but other witnesses confirmed that the employer had wanted to hire people in their early twenties. During the course of the investigation, the commission also discovered a deliberate effort by the company to exclude women from the position.

In conciliation, the following proposals were agreed upon:

- The hiring policy regarding the exclusion of women was changed, and the commission assisted the company to develop methods to recruit and hire qualified women on an equal basis with men.
- The complainant received \$200 in compensation for the earnings he lost as a result of discrimination. Also, the employer agreed that a human rights seminar be held with his staff, and he posted declarations of management policy to comply with the provisions of the code on the premises.

● A 40-year-old Toronto man alleged that he was refused a job as a driver because of his age. The investigation revealed that there were numerous hirings of persons 40 years of age and older during the time the complainant applied for the job. The respondent had believed that the complainant was not the best candidate for the position, in comparison with other applicants, and the investigation substantiated this claim.

The complainant agreed that the evidence did not support the allegation of discrimination on the basis of age. As a goodwill gesture, the respondent invited the complainant to take an aptitude test for another position with the company. Another job interview was then scheduled.

● The complainant, a Trinidadian-Canadian of East Indian origin living in Toronto, alleged that he was dismissed from his job as a maintenance mechanic because of his race, colour, ancestry and place of origin after a new white co-worker had given false reports of poor work performance to the supervisor.

In investigation, the commission found that the complainant had been the victim of verbal harassment and pressure from the co-worker and another white employee. Several members of the supervisory staff claimed that the complainant's production levels had been low, but his co-workers believed that his performance had suffered because of the continuing harassment. The evidence showed that the company had not responded when tensions involving the complainant developed at the workplace.

In settlement, the employer paid the complainant \$704 in compensation for the wages he lost while out of work. The company requested that the staff of the commission meet with the employees in the complainant's work area to discuss the complaint and its resolution, and management instituted a grievance procedure for all employees.

● A man of English ancestry responded to an Eastern Ontario newspaper advertisement which required applicants for a social work position to be fluent in both English and French. Because the advertisement specified a preference for persons whose mother tongue was French, the complainant felt that applicants with the required language ability and professional qualifications would not be considered, if they did not have French ancestry.

The man filed complaints naming both the newspaper and the employer. Investigation showed that the requirements for the position had been specified by the chief executive officer of the employment organization.

In conciliation, the employer agreed that, in the future, he would consider all applicants who possessed the necessary qualifications, regardless of their nationality, ancestry, or place or origin. The newspaper printed a retraction, stating its policy to comply with the provisions of the code, and accepting full responsibility for all material which it publishes. In addition, settlement included the employer's agreement that commission staff conduct a human rights seminar for his employees.

● The complainant, a man of East Indian origin living in Ottawa, had been employed by a large manufacturing company as a senior accounts clerk for three years. He had received a promotion because his work performance had always been considered very good. After two years, he was transferred to a branch office at his own request, and the company paid his relocation

expenses. Four months later, his employer told him he was to be replaced by someone with more experience. He filed a complaint, alleging dismissal because of his race, colour, nationality, ancestry and place of origin.

Investigation revealed that the complainant's job performance had deteriorated following his transfer. Shortly after his move, the company began to reduce the number of staff because of a marked slowdown in business. The reduction affected 10 employees in another department, one of whom requested the opportunity to apply for a position in the complainant's department. Evidence revealed that this employee, a white Canadian-born male, held superior qualifications for the position than those of the complainant.

In conciliation, the employer agreed to pay the complainant \$1,000 in compensation for earnings lost, as a goodwill gesture. The employer provided a letter of recommendation to the former employee and provided assurances that he would be considered for any future openings for which he qualified. Because the complainant had moved to another city, and did not want immediate employment with the company, he expressed satisfaction with the settlement as negotiated.

● A male immigrant from Guyana, who had been employed by a Toronto manufacturing firm for eight years as a machine operator, claimed that he had been the victim of harassment and racially derogatory name-calling by a white co-worker for several years. He had complained to management on many occasions, but no action had been taken to resolve the problem. He therefore filed a complaint, alleging discriminatory terms and conditions of employment because of his race, nationality, ancestry and place of origin.

The investigation revealed that tension had been developing between the two employees for three years. However, witnesses indicated to the commission that the complainant had not caused any disagreements, and the co-workers had frequently overheard name-calling and derogatory remarks. The complainant had no difficulties with any other employees.

The employer had met with both employees several times, but had left it up to them to settle the matter themselves.

In conciliation, the employer agreed to participate in a meeting with the complainant, supervisory staff, union representatives and the commission. The issue of racial harassment was fully discussed, and the company implemented strategies for the investigation and settlement of racial, ethnic and religious conflicts at the workplace. A followup meeting was held six months later, at which the new policy, and workers relations, were again reviewed.

The complainant and the company were satisfied with the outcome of the intervention by the commission.

● The complainant, a Native Canadian Indian woman, had been employed by a Kingston company as a secretary for several months. She alleged that she was then dismissed, with no reason given, in spite of the fact that no complaints had ever been made about her work performance. During her employment, however,

several co-workers, had made derogatory remarks about Native Indians.

The woman filed a complaint, alleging discriminatory terms and conditions of employment and termination because of her race and ancestry.

Investigation showed that the complainant was generally well respected by her supervisors and co-workers, but the office manager had been unwilling to hire her at the outset because she was a Native Indian. It was found that the office manager had recommended the complainant's dismissal despite her good work performance and a policy of fairness and nondiscrimination held by senior management of the firm.

In settlement, the respondent agreed to compensate the complainant for earnings lost, and she received a cheque for \$334. The company provided her with a letter of reference, made a written statement assuring the commission of future compliance with the code, and posted a declaration of management policy to this effect on company premises.

• The complainant, a black female immigrant from Jamaica, had been employed by a Toronto bakery for several months. She alleged that a white co-worker constantly made racially derogatory remarks and was making working conditions difficult. The complainant told her supervisor about the problem, but no positive steps were taken. When an incident occurred between the complainant and the co-worker, the complainant was dismissed from her job. She then filed a complaint, alleging discriminatory terms and conditions of employment and dismissal because of her race, colour, nationality, ancestry, and place of origin.

The investigation substantiated the allegations. In conciliation, the employer agreed to withdraw the dismissal, but the complainant had found another position. The respondent paid the complainant \$2,940, representing earnings lost, and a declaration of management policy to comply with the code was posted on company premises. Although it was not part of the settlement, the respondent chose to dismiss the white employee who had subjected the complainant to racial harassment.

The commission sent a letter to the respondent pointing out the company's obligation to take corrective action to prevent harassment of an employee because of race, nationality, or religion, and noting that failure to do so would constitute a contravention of the code. It was suggested that a policy directive be issued to managers, or that a human rights seminar be conducted by the commission.

• The commission initiated a complaint alleging discrimination in advertising on the ground of sex under section 13.-(3) of the code when an advertisement appeared in a Thunder Bay newspaper recruiting males for the position of security guard.

During the investigation, the company admitted that females were told they could not apply. The commission learned that a female applicant had been told by a secretary at the company that only males would be considered.

Following conciliation, the company posted on its premises a declaration of management policy to comply with the code. A policy statement was issued to staff stating that the company is an equal opportunity employer. The employer also agreed to allow the commission to monitor its hiring practices, and to

review the number of men and women applying for all positions as compared with the numbers hired, for a period of 18 months.

• A woman from Southern Ontario replied to an advertisement for a farm worker whose duties would include tending the dairy herd, milking, caring for the cattle, and maintaining the milking machinery in good order. The employer expressed concern about hiring a woman for the job, and later hired a male. The woman filed a complaint, alleging discrimination in employment because of her sex.

During investigation, the employer expressed his concern that a woman would not be able and competent to perform the job duties, and said that this was the reason for not hiring the female applicant.

After the first conciliation meeting was held, the employer contacted the commission and requested a second discussion to review the complainant's application. He offered her a job the next day and a followup indicated that the employer found her to be a capable employee. She was enjoying her work, and both parties were pleased with the outcome.

• A Toronto woman alleged that she had been refused employment in a management trainee position because of her sex. The department manager had told her it was a "man's job" when she was referred for an interview by a Canada Manpower Centre.

In investigation, several company employees gave evidence to the effect that they believed a woman could perform the job duties.

During conciliation, a representative from the Women's Bureau accompanied the human rights officer and explained the resources that are available at the bureau to assist company personnel to develop an affirmative action program. The respondent agreed to establish a program, which will be monitored by the commission on an annual basis.

The company also issued a staff directive on compliance with the provisions of the code to all its managers, and requested a human rights officer to give seminars to senior company personnel regarding fair and non-discriminatory employment practices.

The company paid the complainant the sum of \$500, representing \$35. in lost wages and \$465 in compensation for insult to her dignity. The complainant requested that the cheque be given to the Toronto Women's Counselling and Information Centre.

• An Ottawa woman applied for the position of full-time salesclerk with a shoe store. The management told the woman he was looking for a man for the job, but because no men had applied he agreed to hire her. She was trained by the assistant manager, who told her he was pleased with her work performance.

A month later, the manager told the woman she was being laid off because she did not have the right personality for the job. When she later found out that a man had replaced her, she filed a complaint alleging discrimination in employment because of her sex.

Investigation revealed that the complainant was hired only to substitute until a suitable male applied for the job. She had completed a short application form designed for part-time employees, and her salary had been \$5. less per week than male salesclerks. Her sales volume had been equal to those of her co-workers.

The commission arranged for the employment standards branch to review the differential in weekly wages. Proper adjustments were then made in the

wages paid to female salesclerks to ensure that they were equal to those of males in the same job categories.

Following conciliation, the respondent paid the complainant the sum of \$455 representing earnings lost and estimated commission for the period between her dismissal and her accepting a new position. A staff directive on non-discriminatory employment practices was sent to all senior employees. The complainant received a letter of apology, and the company also wrote to the commission, with assurances of future compliance with the provisions of the code.

● A Sudbury woman had been referred by a Canada Manpower Centre counsellor to a large mining company for an interview for a position as a stationary engineer, a position for which she was qualified. However, the company refused to hire her, because they did not have washroom facilities for female employees. The woman filed a complaint, alleging discrimination in employment because of her sex.

Investigation showed that the company did not have any female employees in any of the production areas of the mine. The personnel manager admitted that the complainant was not hired because of her sex, and a man was placed in the position.

In conciliation, the respondent agreed to provide washroom facilities within one year, and to consider applications made by women. A staff directive on non-discriminatory employment practices was issued to all senior employees. The employer agreed to interview and consider the complainant, but because she had found alternative employment, she declined the offer. The respondent provided the commission with written assurances that the company would comply with the provisions of the code.

● A woman from the London area began employment as a technical assistant in a photography studio. During her on-the-job training, she alleged that her employer consistently made sexual advances, which she always resisted. When she would not consent to these advances, the employer began to find fault with her work performance. When she could no longer tolerate the situation, she resigned from her employment and filed a complaint alleging discriminatory terms and conditions of employment, and dismissal because of her sex.

A month after this complaint was filed, a second female trainee lodged a similar complaint, further alleging she had been dismissed because of her refusal to accept her employer's advances.

Testimony of several former and present female employees indicated a course of behaviour identical to that described by the complainant. When the commission made enquiries of officials at the area Canada Employment Centre and Unemployment Insurance Commission Office, they reported that they had been made aware of similar complaints.

Following a conciliation meeting between the complainant, the employer and the commission, the employer paid the first complainant the sum of \$1,780, representing lost earnings of \$780 and damages for pain and humiliation of \$1,000. The second complainant received a cheque for lost wages of \$4,810 and damages for insult to dignity in the amount of \$1,000. The employer sent the commission a letter of

assurances of his future compliance with the provisions of the code.

Because the commission had discovered a number of complaints lodged with Canada Employment Centre and Unemployment Insurance Commission officials which had not been referred to the commission, arrangements were made to conduct a seminar with senior officials of these agencies, in order to make them fully aware of the general problem of sexual harassment in employment.

● A Belleville woman had been employed as an assembler in a large manufacturing company for over 20 years. For several years she had observed that the higher paying jobs tended to be held by men. She also believed that women with seniority could not bump men as easily as men bumped junior women. She felt that the provision enabling male employees facing layoff to use their seniority rights to move into a job for which they were qualified operated to the disadvantage of female employees.

The woman filed a complaint alleging discrimination in employment because of her sex when she was not allowed to bump into a position which she had assumed for a time several years earlier, and for which she possessed the required skills.

Investigation showed that the job which she had formerly been moved into following a layoff had recently been designated a classified position for which employees had to compete on the basis of merit. It was also learned that the man who had assumed this job had more seniority than the complainant.

However, the commission found a tendency among management and employees to regard some jobs as male-oriented only, with others being restricted to women. The respondent had not imposed these restrictions, but they had developed from an informally accepted practice of designating positions as being more suitable for one sex or the other.

During conciliation, the employer agreed to cease listing male and female designations on the employee's employment records and job descriptions. Hiring was to be based solely on suitability and merit, with sex having no role in an employment-related decision. The respondent undertook to assign women to all sections of the plant, which would enable them to train for a number of different assignments. The commission assisted the employer to review his employment practices, and to remove any barriers which tended to discourage women from applying for better-paying jobs. Both the employer and the staff were pleased at the outcome of these meetings.

● A woman had been employed as an executive secretary to the vice-president of a general contracting firm for several weeks when the president of the company began making sexual advances towards her during business hours. The woman alleged that she told her employer she could not tolerate his behaviour, and was resigning from her job. Her employer promised to provide her with a reference, but he later told her he was instructed not to do so by the president. She filed a complaint alleging discrimination in employment because of her sex.

During the investigation, the president denied the allegations, and no other employees had witnessed the incidents. However, evidence indicated that many of the female employees had heard that the respondent had made similar advances in the past. An ex-employee gave evidence to the commission that she had been

victim of the same harassing conduct. The allegations had been substantiated.

In conciliation, the respondent paid the woman the sum of \$2,400 in damages for discrimination and insult to her dignity. She also received a letter of apology and a reference.

● A woman had been told by three co-workers that they had been subjected to verbal and physical sexual harassment by the owner of a Toronto manufacturing company and two senior managers. With the co-workers permission, the woman filed complaints with the commission on their behalf, alleging discrimination in employment because of their sex.

Investigation revealed a pattern of sexual advances and profane and obscene language directed at the three female employees. The commission also learned that the women had told their supervisor about these incidents, but the supervisor's attempts to have the problem dealt with by senior executives of the company were not successful, and the behavior continued. Shortly after investigation began, the three women resigned from their employment because the harassment had become intolerable.

Several items were negotiated during conciliation. The three women received cheques in the amounts of \$1,800, \$1,950 and \$2,430, representing compensation for earnings lost, and damages for insult to dignity. Also, the respondent amended his company regulations to include a three-stage disciplinary procedure for all forms of discriminatory practices with dismissal for a third offence. The company provided written assurances of its agreement to comply with a new policy to prevent and remedy discriminatory treatment of all employees.

Complaints of Discrimination in Reprisal Actions Against People Who Have Taken Part in a Complaint

When a Northern Ontario man was not hired for a labourer's job with a transportation company, even though he held the necessary qualifications, he filed a complaint alleging discrimination in employment. He later reapplied, for another labourer's job, and was invited for an interview. He was unsuccessful on this occasion, and filed a second complaint, alleging discrimination on the grounds of his previous complaint against the company.

Investigation disclosed that the complainant had received discriminatory treatment during the interview. The district supervisor of the company was involved in the interview, and the complainant was given an eye test — procedures which did not apply to the other job candidates.

Following conciliation, the company offered the complainant a position in the field for which he applied, and the complainant accepted the offer. The company provided assurances of its future compliance with the provisions of the code.

● A woman had been employed as a hairdresser in a Toronto salon for several months when a new manager was hired. She encountered problems in her employment because the manager continually found fault with her work performance, despite the fact that her work had always been considered good by her previous supervisor.

She requested a meeting between her employer, the manager and herself to resolve the problem. When the employer refused this request, she called the commission and asked for help in dealing with the situation. When she later told her employer that she had

contacted the commission, he dismissed her. She then filed a complaint alleging that her employer had discriminated against her because she had involved the commission in the matter. When the commission's officer met with the employer, the latter agreed to transfer her to another location. She later informed the commission that the move worked out very well, and she asked that her complaint be withdrawn.

Complaints of Discrimination in Housing Accommodation

The complainant, a black male immigrant from Trinidad, went with a white friend to view a Toronto apartment that had been advertised in the newspaper. The complainant alleged that he was told that none was available. The newspaper advertisement continued and the complainant reapplied. He was again told there was no vacancy. The next day his white female friend went to apply and was shown three vacant apartments.

During the investigation, the respondent claimed that the apartments were being cleaned and were ready only when the white woman arrived. It was revealed that no black tenants were presently living in the building, but names of previous black residents were supplied. As well, a black man works for the respondent.

At the time of resolution, the complainant was no longer interested in renting an apartment in the building. However, the respondent agreed, in writing, that if the complainant were interested in renting there in the future, he would be considered on the same basis as any other applicant.

The respondent also posted declarations of management policy of compliance with the code on the premises and sent to the commission a letter of assurance of adherence to the code.

● The complainant, a black female immigrant from Jamaica, alleged she was denied the opportunity to rent an apartment in Toronto that was advertised in a daily newspaper because of her race and colour. She had been told on the telephone she could view the accommodation on the following day. When the woman visited the building, the superintendent claimed that she had been told by the manager that the apartment in question had been promised to someone else.

Investigation showed that there were two vacancies at the time, and that the building owner had authorized an advertisement for one of them. It was advertised periodically for 10 days. Although the management did not keep complete records, the commission learned that no one had viewed the apartment before the complainant's visit. Only one black tenant lived in the building at the time.

During conciliation, the respondent agreed to offer the complainant one of the apartments, to post declarations of management policy of compliance with the code in the building, and to provide a letter of assurance to the commission of such compliance. The complainant received a cheque for \$50 in compensation for insult to dignity.

Because the complainant had found other more suitable lodging in the meantime, she declined the rental offer.

- A black Canadian woman and her white fiancé alleged they had been denied rental of an Ottawa apartment because of her race and colour. She claimed that on visiting the building, the superintendent was rude and abrupt, and told the couple she had misplaced the key to the vacant apartment. The complainant looked at the superintendent's apartment and expressed an interest in renting the available accommodation.

During the investigation, it was revealed that the complainant had not been told that others had been promised they could view the unit, and that names of interested applicants were being recorded. It was also discovered that one black tenant had lived in the building for about a year, but was evicted because of nonpayment of rent.

During conciliation, it was agreed that the complainant's application would be considered. Both parties, along with the commission's officer, went to see the apartment in question. The complainant was offered an apartment and signed a lease.

- The complainant, a Native Canadian Indian woman, alleged that she was denied housing accommodation in a Northern Ontario city because of her race, colour and ancestry.

The evidence supported the complainant's allegation. The respondent argued that he had been unaware of the provisions of the code, and could not be held legally responsible for his actions.

In conciliation, the complainant received \$300 in compensation for out-of-pocket expenses resulting from discrimination, and a letter of apology from the respondent. Because the complainant had found alternative accommodation, she was not interested in applying for a future vacancy. A letter of assurance of compliance with the provisions of the code was sent by the respondent to the commission.

- A Native Indian living in London claimed she had made several attempts to rent a two-bedroom house but was always told it was not available. Through her own investigation she found the accommodation was still for rent.

During investigation by the commission, the rental agent admitted he had refused an application from the complainant because she was Indian. He claimed he had done so on direct orders from his employer.

At the conciliation meeting, the respondent agreed to the following:

- A meeting with Native people's representatives to show future willingness to rent to all applicants on an equal basis;
- Payment of \$1,500 which the complainant wished to be apportioned between herself and two Native people's centres;
- A letter of assurance to the commission of compliance with the code and the posting of declarations of management policy to this effect on the premises;
- A letter of apology to the complainant.

- A woman with a child, who was separated from her husband, alleged that she was told by the manager of an apartment building that it was company policy not to rent his Toronto apartments to single parents. When the complainant's husband called, saying he wanted to rent a two bedroom apartment for himself and his son, he

was invited to submit an application, an act that caused the complainant to believe she was discriminated against with respect to housing accommodation because of her sex.

The investigation revealed that when the complainant applied, the tenants then occupying the unit had not yet decided whether or not to move. However, the respondent admitted a preference for couples, especially when both were working, for credit purposes. The apartment was later rented to a married couple already in the building who needed a larger apartment.

Since the complainant had a good credit rating, the respondent offered to accept an application from her for a sub-let that had just become available. Because the complainant had found accommodation elsewhere, she turned down the offer. The respondent provided assurances of his future compliance with the provisions of the code.

Complaints of Discrimination with Respect to Public Accommodation, Services and Facilities

The complainants, six Native people and a white woman, alleged that the police, who had been summoned by the management of a hotel in Southwestern Ontario, forced them to leave the hotel for no other reason than that they were Indians or, for the white woman's part, in the company of Indians.

The investigation revealed that none of the complainants had ever had problems with the management before, but were victims of a policy to exclude Natives because a number of disturbances involving Native guests had occurred in the past. The complainants had gained access to the hotel because they did not look Indian, and were with a white person. Evidence also showed that the dress code was not equally applied; whites wearing blue jeans had no trouble gaining entrance while Natives in jeans were refused admittance.

Following conciliation, the respondent agreed to donate \$1,000 to a Native resource centre at the request of the complainants, and the complainants received \$200 in compensation for their legal fees. A dress code and rules of behaviour, and declarations of management policy to comply with the provisions of the code were posted on the premises. All staff were made aware of the guidelines. The complainants expressed satisfaction with the settlement.

- A black Canadian woman alleged that she had been followed around a Kingston department store by an employee from the time she had entered the premises. The woman finally approached the store employee and asked her why she was being watched. A verbal exchange followed and physical altercation broke out, and the employee called the police, who told the complainant to leave the store. It was then that the complainant learned the woman was a security guard employed by the store. The complainant believed that she was followed only because she was black.

The investigation revealed that the complainant had not stolen any articles, although she had behaved aggressively when she questioned the security guard. Also, the security guard had mistaken the complainant for a woman who had caused trouble in the past.

The complainant received a cheque for \$300 in compensation for the insult to her dignity. She was invited to enter the store and receive treatment equal to

other shoppers. Declarations of management policy to comply with the provisions of the code were posted at the entrance to the store.

- The complainant, a Native person, alleged that he sought treatment in the emergency room of a Northern Ontario hospital, but was refused admission. The explanation given him was that a large number of patients were waiting to be examined. He filed a complaint, alleging a discriminatory denial of public services and facilities, because of his race, colour and ancestry.

Investigation revealed that significant numbers of Natives were admitted to the hospital, for both emergency treatment and medical care. However, it was hospital policy that the patient's physician must authorize admission and treatment, unless the treatment is emergency care that is necessary to save life.

During conciliation, the commission's officer explained that this admissions and treatment policy had not been made clear to the complainant, who had therefore believed the hospital's practices to be discriminatory.

The commission asked the Minister of Health to conduct a review of the hospital's admission policy, and this study revealed no discriminatory procedures. The hospital later hired a Native person in a paramedical position, in order that its policies and practices concerning health care could be conveyed more effectively to Native patients and their families. In addition, the commission conducted a human rights seminar for hospital staff.

- An East Indian had enrolled as graduate student in a Southern Ontario University. He alleged that one of his professors harboured prejudice against East Indian students, and had used improper assessment methods when marking his papers and examinations. When the student failed the course, despite average grades in most of the course work, he filed a complaint alleging discrimination with respect to public services and facilities.

During investigation, several colleagues of the professor stated that he was known to make disparaging remarks about East Indian culture and history. Several East Indian students felt that the professor's evaluations of their work were biased and unfair. However, it was found that the complainant had not passed an examination on an aspect of study which was a prerequisite for further work in his field.

In conciliation, it was agreed that the complainant would be permitted to take another course taught by a professor of his own choosing. Assurances were given that if he passed this course, he would be awarded the degree. The university also waived the fees involved in enabling the student to take the additional course.

- The complainant, a Native person, had applied for a credit card for a department store in a Northern Ontario city. The credit manager told him it was company policy not to grant credit to Natives who lived on a reserve. His complaint alleged discrimination because of his race, colour and ancestry.

Investigation showed that credit cards are issued to Indians who do not live on reserves. The store's policy had been designed out of an erroneous belief that if a Native person does not pay for merchandise, a vendor cannot recover these goods from residents of reserves, under the provisions of the Indian Act. The commission's legal counsel advised that there are not problems in repossessing goods bought on credit, because nothing in the Indian Act affects the validity of a contract between buyer and seller. Also, the provisions of the code regarding discrimination against Native people apply to all residents in the Ontario jurisdiction, and therefore the store was found to be in contravention of the statute.

In settlement, the respondent agreed to review the complainant's application for credit on a basis equal to all other applications. An assessment of past applications from reserve Indians was carried out, and an offer of credit promised to those considered to be credit-worthy according to normal standards. A directive concerning the company's policy to adhere to the provisions of the code was issued to all managers of the store's branches across Canada.

New Initiatives in Race Relations

The fall of 1979 witnessed the implementation of two major government initiatives in the race relations field, each designed to respond more effectively to the growing number of issues that have arisen in this sensitive area. They are as follows:

1) Commissioner for Race Relations

Dr. Bhauzaheb Ubale, a commissioner with the Ontario Human Rights Commission, was appointed as the first Commissioner for Race Relations for the Province of Ontario. His mandate is to focus upon the private sector and the concomitant race relations issues that arise within that area.

2) Race Relations Division

To augment the commission's present program in this area and to assist the commissioner for race relations, a Race Relations Division within the Ontario Human Rights Commission has now been established. The division's responsibilities are to implement policies and programs designed to improve the race relations climate, to remove discriminatory practices based on race, and to reduce racial conflicts and tensions when they arise.

The Activities of the Commissioner for Race Relations

Police Training in Race Relations

1979 saw Dr. Ubale and the staff consulting extensively with representatives of the Ontario Police Commission on the topic of police training in race relations. He also canvassed various law enforcement, human rights and race relations agencies in Canada and other parts of the world to determine the nature and effectiveness of police training programs in other jurisdictions. As a result of the consultations, it was decided that a task group composed of community, academic, and law enforcement representatives should be struck in order to examine the status of police training in Ontario with a particular view to developing appropriate guidelines for race relations training. Such guidelines would assist in standardizing training in this field and assist police departments throughout the province in providing necessary training at the recruitment and in-service levels for all their members. This task force has commenced its work in that direction.

Outreach to Religious Institutions

In March of 1980, the race relations commissioner, with the assistance of several of his commission colleagues, convened a meeting of more than 35 representatives of Christian and Jewish religious institutions. This consultation was the first major commission initiative to enlist the support and leadership of this important sector of Ontario society in the task of fostering harmonious race relations at the community level. Participants came prepared to design and develop practical action plans for their constituencies. Self-examination and careful review of the role of religious institutions assisted them in charting a new direction as several participants shared in the view that there indeed existed a significant gap between intention and performance in furthering human rights principles.

This situation appeared to be in contrast to earlier years when religious leaders were in the vanguard of human rights reform. Religious institutions recognize that their policies and activities can effect positive attitudes among their congregations, and they have reaffirmed their leadership role in promoting positive race relations in Ontario.

As a result of this consultation it was agreed by the participants that greater efforts would have to be taken by all religious institutions, and a working coalition was struck to prepare a Statement of Concern and Strategy, and to harness the support of the Ontario religious community to respond to this challenge by offering concrete proposals to counteract racism in the province.

C.T.V. and The Chinese Canadian Community

The commissioner for race relations, with the assistance of the commission's vice-chairman, Rabbi Gunther Plaut and staff, played a key role in effectively mediating the dispute that developed between the CTV network over its W-5 segment entitled, "Campus Giveaway" which was telecast in September, 1979. The Chinese Canadian community, predominantly represented by the Ad Hoc Committee of the Council of Chinese Canadians in Ontario Against W-5, was

extremely concerned about both the program content and the tone and direction of this television segment.

The issue fell beyond the formal jurisdiction of the commission because telecommunications are a federal matter. However, the commission felt, given the community implications involved, that it could play its most effective role, not as an advocate, but as a mediator. Therefore, both Dr. Ubale and Rabbi Plaut maintained close contact with both parties as they endeavoured to negotiate a settlement. When the fragile negotiations appeared to be in jeopardy in March of 1980, the commissioner for race relations and the vice-chairman elected to convene a private meeting of CTV and the ad hoc committee in order to impress upon them the need to negotiate in good faith in order to arrive at an amicable solution. This was agreed to, and Dr. Ubale continued to maintain close contact with the two parties, providing assistance where necessary. A settlement was arrived at shortly thereafter. Both parties, in their joint statement which incorporated the settlement terms, extended their appreciation to the commission for the assistance that it rendered.

Community Conflict Resolution

When tensions arose between the South Asian community and their non-South Asian neighbours over parking and littering problems attributed to a large South Asian attendance at an East Indian movie theatre and neighbouring shops and restaurants, the commission and staff through Dr. Ubale intervened in an effort to resolve the problems and reduce the tension which this situation generated. Commission staff convened meetings of neighbourhood residents, the South Asian merchants, other merchants in the area, the police, school and community representatives, and members of the local municipal council in an effort to arrive at a satisfactory solution to the problem. Various options were discussed and agreed to by the parties in an effort to reduce the most immediate problems of parking and litter, and a communications network was established amongst the residents, the South Asian merchants and the municipal council in order that future problems would not develop but instead be resolved through established channels.

Race Relations Programming, A Multi-Sectoral Approach

In order to complement staff initiatives in race relations in the City of North York, Commissioners Ubale, Plaut and Armstrong met with Mayor Mel Lastman and proposed a multi-sectoral approach to race relations program delivery in his city. The mayor agreed to pilot a proposal that a Mayor's Committee on Race and Ethnic Relations be established, comprised of representatives from religious institutions, educational institutions, municipal council, the police, the Ontario Human Rights Commission and the community.

Commission staff in turn worked with the mayor's office in establishing the committee, assisting it in identifying its terms of reference, and providing the necessary consultation on specific issues and concerns in the area of race relations. Committee initiatives to date include the development of a municipal policy in support of positive race relations and equal opportunity which has been ratified by the municipal council and several of its boards and commissions.

Activities of The Race Relations Division

With the creation of the Race Relations Division in the fall of 1979, the staff and resources of the Commission's Community, Race and Ethnic Relations program was absorbed to form the nucleus of the new division.

Neighbourhood Relations

Commission staff continued to assist various individuals, groups, community organizations and associations active in the human rights field throughout Ontario in order to improve the race relations climate at the community level. Staff worked with the Riverdale and Parkdale Community Councils in Toronto on a joint community project on the subject of human rights in an effort to increase the community's awareness of both the rights and responsibilities of Ontario residents under the code. Similar seminars were also held in London and Windsor as the commission co-operated with local human rights committees which have been established in those two cities.

When racial conflicts between the Native Indians and Non-Native population residing in a subsidized housing unit in southwestern Ontario developed, commission staff were called in to assist in resolving the conflict before it escalated into physical confrontation. Commission staff were able to ascertain that both parties were mistrustful of each other, that little communication was taking place between the two groups, and that each group was to a certain extent blaming the other for the deteriorating housing conditions in the complex. Since the issue of housing conditions was of mutual concern and since both groups agreed on the need to improve relations, they decided that a joint tenants' association should be formed to press for the necessary improvements in housing conditions as well as for improved tenant relations in the complex.

Educational Institutions

The commission continued its liaison with the Ministry of Education. Specific co-operative projects included the development of educational resource materials on the subject of human rights and race relations and the preparation of guidelines on bias for the authors and publishers of textbooks.

In addition, the commission continued to work with various boards of education throughout the province. An example of this activity included the commission's participation on the Race Relations Committee of the Toronto Board of Education. This committee is monitoring the implementation of the well over 100 recommendations to improve the race relations climate in schools which were approved by the board in 1979. Areas under review include curriculum bias, teacher training in race relations, reducing racial incidents in the classrooms and the school yards, proper placement and assessment of students to ensure that race and ethnicity do not become determining factors, and employment and promotion practices of the board to ensure compliance with the principle of equal employment opportunity.

In Ottawa, commission staff are assisting the local board of education's multiculturalism committee in its review of the curriculum. In Thunder Bay, staff are

working with various teachers in the system to develop seminars for students on prejudice and stereotyping.

When tensions between Jewish and non-Jewish students developed in a southwestern high school, staff were able successfully to mediate the dispute and the commission also assisted the administrative staff in the implementation of new educational programs for the students on the issues that originally led to the conflict. When problems occurred between a local school near Windsor and the black community regarding the treatment of black students in the school, the commission was able to resolve the conflict and establish a liaison between the school's administration and the black community so that immediate action could be taken to resolve past grievances and preventive efforts could be designed to avoid future conflicts.

Law Enforcement Agencies

The commission continues its liaison with various police departments throughout the province. Although most activity during the fiscal year involved the establishment of police in-service training or refresher courses on race relations with such police forces as Windsor, Ottawa, Kingston, Hamilton-Wentworth, Kitchener-Waterloo, York Regional and Peel Regional, the commission also consulted with various police departments on specific issues involving hate literature distribution and its control, as well as preventive policing in such racial assaults and acts of vandalism against small shops and private property owned by South Asian residents. In the case of the Peel Regional Police, the creative application of a seldom-used section of the Criminal Code for social control purposes relating to incitement to racial hatred has been involved in certain incidents and the issue is currently before the courts.

Business and Industry

When racial tensions developed among employees of a large paper manufacturing plant in Southwestern Ontario, the commission staff met with plant personnel, management, and the union in order to assess the situation. After a survey of the workplace, the commission proposed several courses of action designed to reduce racial tensions in the plant. In addition to conducting an all-day seminar with senior management and front-line supervisors on the subject of race relations, the commission assisted management in drawing up company policy and procedures regarding racial incidents in the workplace.

When problems of a similar dimension developed in a large warehouse in a Toronto suburb, the commission's consultation services were called upon by management. An intensive review of personnel policies and practices was conducted. The commission made several recommendations to management concerning personnel hiring policy and promotion practices and other phases of the employment relationship, including staff development needs in the race relations area. Staff of the commission and the company's personnel director are currently working on the implementation of the recommendations.

When racial conflicts between supervisors and workers and among workers of different racial backgrounds in a major downtown Toronto hotel developed, the commission's staff were successfully

able to resolve the problems that had developed through a series of small group sessions with the staff to explore the nature of the issues. Concerns that had previously developed were brought up for discussion through the informal sessions, and solutions were developed to reduce these conflicts. Special training was also given in areas where conflicts required more long-term solutions.

The commission staff continued to provide its consultation services on both a long- and short-term basis to such organizations as the Metro Toronto Children's Aid Society and various human rights and race relations organizations throughout every part of Ontario. These included the Urban Alliance on Race Relations, the London Citizens' Committee on Human Rights, and the Kenora Ad Hoc Committee on Native/Non-Native Relations. As a result of an annual three-day residential seminar series held in Kenora on the subject of Native/Non-Native relations, which the commission initially sponsored in 1978, several participants representing diverse fields of endeavour have now formed a network in the city in an effort to improve the race relations climate. Network participants include representatives of health services, law enforcement, education, religious institutions, Native organizations, and municipal government, all of these being areas where expertise can be shared to improve relations between the Native and Non-Native communities.

TABLE 1

Disposition of Closed Formal Cases

Disposition	1979-80		1978-79	
	Number	Per Cent	Number	Per Cent
Settled	385	73	568	87.
Dismissed	81	15	42	6.5
Withdrawn	63	12	43	6.5
Total	529	100	653	100
Informal Cases				
Completed			385	181

Statistics

TABLE 2

Settlements obtained in Formal Complaints: 1979-80

Settlement Category	Employment	Complaint Category			Other*	Total
		Housing	Public Accommodation, Services and Facilities			
Compensation	\$90,492 for 56 complainants	\$1,850 for 3 complainants	\$8,807 for 10 complainants		\$1,816 for 2 complaints	\$102,960 for 71 complaints
Offer of present or Future Job or Facility	66	15	12		5	98
Offer Accepted	42	2	7		4	55
Affirmative Action	13	1	—		—	14
Consultations and Review of Practices	423	40	44		28	535

*"Other" includes "signs and notices" complaints, "reprisals" complaints, and complaints filed by OHRC, person or organization on behalf of another person.

TABLE 2 (a)

Settlements Obtained in Formal Complaints: 1978-79

Settlement Category	Employment	Complaint Category			Other*	Total
		Housing	Public Accommodation, Services and Facilities			
Compensation	\$50,099 for 39 complainants	—	\$7,000 for 2 complainants		—	\$57,094 for 41 complaints
Offer of present or Future Job or Facility	143	16	21		4	184
Offer Accepted	42	5	12		1	60
Affirmative Action	10	—	1		3	14
Consultations and Review of Practices	439	34	26		11	510

*"Other" includes "signs and notices" complaints, "reprisals" complaints, and complaints filed by OHRC, person or organization on behalf of another person.

TABLE 3

Formal Cases According to Grounds and Social Areas: 1979-80

Social Area	Race Colour	Nationality Ancestry	Grounds			Age	Filed on Behalf of Another Person	Total
			Sex	Marital Status	Creed			
Employment	159	62	163	21	30			435
Housing	27	1	3	2		1		34
Public Accommodation Services and Facilities	25	7	7	1				40
Reprisals	4	1	3		1	1	1	10
Signs and Notices								
Filed on Behalf of Another Person	4		1	2		3		10
Total	219	71	177	26	31	5		529

TABLE 3(a)**Formal Cases According to Grounds and Social Areas: 1978-79**

Social Area	Race Colour	Nationality Ancestry	Grounds			Filed on Behalf of Another Person	Total
			Sex Marital Status	Creed	Age		
Employment	317	40	128	30	50	3	568
Housing	28	2	2	1		1	34
Public Accommodation Services and facilities	21	2	12	3		1	39
Reprisals	6	1	1		2		10
Signs and Notices			1				1
Filed on Behalf of Another Person	1		4		1	1	7
Total	373	45	148	34	53	6	659

TABLE 4**Boards of Inquiry**

	1979-80	1978-79
Hearings Appointed	25	19
Hearings Completed	14	6
Finding for Complainant	7	4
Finding for Respondent	4	1
Settled at Hearing	3	1

TABLE 5**Race Relations and Public Education Activities**

Race Relations	1979-80	1978-79
Mediations	137	211
Major Projects	27	
Consultations	170	881
Public Education		
Major Projects	45	20
Activities	398	485

TABLE 6**Race Relations Activities According to Sector: 1979-80**

Sector	Mediations	Consultations
Neighbourhood Relations	44	2
Community Service and Facilities	14	1
Criminal Justice System	35	12
Educational Institutions	14	30
The Workplace	8	2
Unions		5
Media	10	1
Health and Social Services		3
Community Organizations	6	82
Religious Institutions		6
Governments	5	26
Community at Large	1	
Total	137	170

TABLE 7**Inquiries, Referrals, Advertising and Application Form Review**

	1979-80	1978-79
Inquiries	16,430	14,246
Referrals	3,629	2,887
Advertising Review	428	403
Application Form Review	711	770
Total	21,198	18,306



Ontario
Human Rights
Commission

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Annual Report 1980/1981

ONTARIO HUMAN RIGHTS COMMISSION

Together we are Ontario



Each of us is unique.
By respecting our differences,
we make life in this province
rich and varied for us all.

TOGETHER
WE ARE
ONTARIO



*Hon. Robert G. Elgie, MD
Minister of Labour*



*Dorothea Crittenden
Chairman*



Chairman's Remarks

I am pleased to present the Third Annual Report of the Ontario Human Rights Commission for the fiscal year 1980-1981. The report outlines the initiatives that we have undertaken in the past year in order to deal with the significant human rights and race relations issues confronting Ontario's minorities and women.

The commission has instituted important initiatives in the past year. In May 1980, a 24-hour human rights hotline, which allows anyone in Ontario to have direct access to the commission at any time, began operation. Trained hotline officers were able to assist over 500 callers in the service's first year of operation.

During the 1980-1981 fiscal year, the commission's new Race Relations Division, established in late 1979, performed an expanded role in addressing problems affecting racial groups in the workplace, neighbourhoods, schools and other institutional sectors. Our conciliation and compliance program initiated a series of new casework procedures designed to cope more effectively with the ever-growing complexities of discrimination complaints.

Affirmation, a quarterly newsletter designed to increase public awareness of our human rights achievements and current concerns, began publication this year. It highlights the issues and the cases that the commission is dealing with. Rabbi Gunther Plaut, our vice-chairman, is the editor.

The growing complexity of both the casework process and the human rights issues affecting Ontario's minorities and women have necessitated a greater number of commission meetings. The full commission now meets three days a month, and a quorum of three commissioners meets one day a week to ratify the settlements achieved in conciliation. These more frequent meetings and community consultations undertaken by commissioners have resulted in a greater integration of their activities with those of the staff.

Seven new compliance officers and five new race relations officers were hired during the year to assist with a burgeoning caseload. In addition, the position of staff solicitor was created. The training of new staff, as well as ongoing staff development, has been adapted to new casework demands that have resulted from a change and proliferation of the legal and factual issues now evident in our complaints. The nature and trends of discrimination have changed significantly from a time when such conduct was confined to a relatively narrow range of issues.

A significant initiative for the coming year will be the passage of the revised *Ontario Human Rights Code*. The revised Code will provide a broad range of protections and remedies, including the prohibition of discrimination against the disabled.

Legislation alone, however, cannot achieve social change without the co-operation and goodwill of all Ontario residents who, together, can advance the principles of human rights, equality of opportunity and social justice. By respecting our differences, we make life in this province rich and varied for us all — together we are Ontario.



Dorothea Crittenden
Chairman

Ontario Human Rights Commissioners, 1980-1981



Rabbi Gunther Plaut
Vice-Chairman



Dr. Bhausaheb Ubale
Race Relations Commissioner



N. Jane Pepino
Commissioner



Andrew Fred Rickard
Commissioner



Canon Borden C. Purcell
Commissioner



Beverley N. Salmon
Commissioner



Dr. Albin T. Jousse
Commissioner



Marie T. Marchand
Commissioner



Peter Cicchi
Commissioner

The Commission

Chairman: Dorothea Crittenden

Dorothea Crittenden is the first woman to head the Ontario Human Rights Commission. Her knowledge of the problems and opportunities of women in employment and her deep interest in public issues spans more than 40 years of civic and public service. She has already established her imprint on the direction and programs of the commission.

Vice-Chairman: Rabbi Gunther Plaut

Rabbi Plaut is a veteran civil libertarian and social commentator. He has been a lawyer, clergyman and author. In December 1978, he was awarded the Order of Canada. He is the editor of the commission's new newsletter, *Affirmation*.

Race Relations Commissioner:

Dr. Bhausaheb Ubale

Dr. Ubale was born in India and educated in the United Kingdom. He holds a Ph.D. in Economics. He authored a report entitled: 'Equal Opportunity and Public Policy: A report on concerns of the South Asian Canadian community regarding their place in the Canadian mosaic.' Dr. Ubale was instrumental in a police training program on race relations now being given at the Metropolitan Toronto Police College.

Commissioner: N. Jane Pepino

Ms. Pepino is an active partner in a Toronto law firm. A native of London, Ontario, she studied at the universities of Toronto and Texas, earning a Master of Law degree. She was called to the bar with honours in 1973. Her experience includes tours of duty as counsel for the Legal Aid Plan and as a volunteer for legal aid clinics and women's organizations.

Commissioner: Andrew Fred Rickard

Chief Rickard is a Canadian Cree, born in Moose Factory, Ontario. He was one of the youngest chiefs ever elected in Canada and has served as vice-president and executive director of the Union of Ontario Indians. He has been Grand Chief of Grand Council Treaty No. 9.

Commissioner: Canon Borden C. Purcell

Canon Purcell was born in Athens, Ontario and is now a resident of Ottawa where his pastoral responsibilities include a large city parish. He has planned and convened ecumenical events that include conferences on racism, refugees and other disadvantaged persons; he is also involved in several international organizations.

Commissioner: Beverley N. Salmon

Mrs. Salmon is a registered nurse. She has served on the executive of the Toronto-based Urban Alliance on Race Relations, as chair leader of the Toronto Board of Education Black Liaison Committee and as a resource person at the Centre for Black Education.

Commissioner: Dr. Albin T. Jousse

Dr. Jousse, a fellow of the Royal College of Physicians and Surgeons of Canada, has published more than 30 papers in his field of rehabilitation medicine. He was both a professor and department head of Medicine at the University of Toronto. He is a member of many agencies concerned with the physically impaired, including the International Society of Paraplegia and the Canadian Neurological Society.

Commissioner: Marie T. Marchand

Mrs. Marchand studied political science and public administration at the University of Ottawa. She lives in North Bay where she has served on the board of directors of the Big Sisters Association, been second vice-president of the North Bay and District Canadian Club and a member of the city's theatre and arts council. Mrs. Marchand is fluent in French and English.

Commissioner: Peter Cicchi

Mr. Cicchi lives in Hamilton and is involved in several Italian-Canadian cultural projects and organizations in that city. He was born in Italy and attended the University of Rome before coming to Canada where he taught Italian at McMaster University.

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Commission Activities

The full commission reviews all complaints of discrimination in which the parties have not reached a conciliated settlement. The commissioners then recommend to the Minister of Labour whether or not a board of inquiry should be appointed.

A panel of three commissioners reviews all settled cases to ensure the settlements are not only satisfactory to the parties, but that they also accord with the public interest. The commissioners are responsible for deliberating upon current human rights issues from which their policy decisions flow. They grant or deny requests for exemptions from the provisions of the Code. In addition, they approve affirmative action programs.

The commission maintains close contact with human rights agencies and organizations in Canada and throughout the world. Representatives of the commission participated in the annual conferences of the Canadian Association of Statutory Human Rights Agencies and the International Association of Official Human Rights Agencies. Commissioners also participated in many meetings and workshops focusing on a wide variety of human rights problems and issues. Furthermore, the commission maintains a liaison network with business, labour, government, the media, police, education officials, religious leaders, social agencies and community groups.

During the past year, the vice-chairman, Rabbi Plaut, edited the commission's new publication, *Affirmation*, which has found a wide and welcome acceptance. Rabbi Plaut also became deeply involved in the North York Mayor's Committee on Community, Race and Ethnic Relations, a committee which he helped to bring into existence. The Rabbi maintained a working relationship with religious communities across the province. In addition, he published several articles on human rights.

Bev Salmon appeared in several television interviews that focused on various aspects of race relations, including the lack of visible minority representation in Canadian advertising. She spoke at several panel meetings and conferences about sex discrimination and women's issues. Mrs. Salmon also represented the commission at conferences on immigrant women and gay rights.

Canon Purcell was appointed to a task force on human rights for the Anglican Church of Canada and he presented a special three-year program on human rights at the General Synod. This special program was approved unanimously and will form the major thrust of Anglican Church activities over the next three years. The canon spoke to a number of police chiefs around the province about police-community relations. He also represented the commission at major conferences convened in Ottawa by the Canadian Human Rights Foundation.

Marie Marchand assisted in planning a very successful staff conference. She gave many interviews on human rights to the French language media in North Bay, Sudbury, Windsor and Toronto. She also spoke at several meetings and conferences and developed contacts with community and native people's organizations across Northern Ontario.

The other commissioners spoke at a number of human rights meetings and maintained contact with the media and community organizations in their local communities.

Advertising Campaign

During the past year, the commission explored the possibility of a major advertising campaign designed to heighten awareness of the commission and its work and to increase understanding among the different racial, ethnic and religious groups.

The commission launched an ad campaign based on the theme 'Together We Are Ontario.' The ads are being displayed on transit vehicles of the Toronto Transit Commission, on television in French and English throughout the province and on posters. The thrust of the campaign is that each of us is unique and if we all respect one another, we make life rich and varied for everyone.

Meetings Outside Toronto

The commission made it a policy to hold its monthly meetings throughout Ontario. Commission meetings, which have traditionally been convened regularly in Toronto, were conducted, this year, in North Bay, Ottawa and Niagara-on-the-Lake. Individuals and organizations from across Ontario were, because of this arrangement, able to

meet with the commission. In addition, the commissioners were provided with a more thorough understanding of the human rights issues in the various regions of Ontario.

Affirmation

Early in 1980, the commission, in its continuing efforts to keep the public abreast of its activities and current human rights issues, resolved to publish a quarterly newsletter. The new publication was entitled *Affirmation* and features stories, analyses of social problems, samples of conciliations and settlements, findings of boards of inquiry, and editorials. Increasing numbers of articles now carry the by-lines of their authors, who are either drawn from the commission, the staff, or members of the public.

The first issue (September 1, 1980) highlighted the W-5 controversy in which a nationally televised program had singled out Chinese-Canadian university students as 'foreigners'. The story told how the commission helped to resolve this issue.

The second issue (December 1980) took note of the Ku Klux Klan's arrival in Ontario, described a variety of cases that had been argued before the commission and featured an analysis of the nature of violence.

The third issue (March 1981) was primarily devoted to a discussion of Bill 209, the proposed new, updated and expanded Human Rights Code. While the dissolution of the Provincial Parliament rendered the Bill technically obsolete, it was re-introduced when Parliament convened after the March elections.

Affirmation is printed in an edition of 10,000, a figure that is likely to increase as the publication becomes more widely known. Commissioner W. Gunther Plaut is the editor.

Human Rights Hotline

A 24-hour human rights hotline was initiated by the chairman in May 1980. It provides the Ontario public with direct access to the commission any time of day, seven days a week. The hotline is staffed by persons fully trained in the intake process and who are well-informed on the wide range of services to which members of the public

may be referred. They are skilled in providing immediate information, advice and assistance with regard to any human rights problem or question. If the matter falls outside the commission's mandate, the caller is referred to the appropriate agency.

This service has been beneficial to people who work during the day and who find it difficult to telephone from their workplace. It is extremely helpful in responding to crisis situations such as racial incidents, which may occur at night or on weekends. Hotline officers are in direct contact with police emergency departments if police assistance is required.

In the first year of its operation, over 500 people telephoned the hotline. These calls dealt primarily with general human rights information and allegations of discrimination in employment.

Anyone can call the hotline, area code 416-965-2216, collect from any part of Ontario. People calling the commission during normal working hours are directed to their local Ontario Human Rights Commission office.

Compliance Procedures

The Ontario Human Rights Commission administers the *Ontario Human Rights Code*, which prohibits discrimination in employment, housing and public services for reasons based on race, colour, creed, age (40–65), sex, marital status, nationality, ancestry and place of origin. The Code also prohibits discrimination in advertising and the posting of signs, discrimination with respect to membership in a trade union or self-governing profession, and prohibits reprisal against any person who has made a complaint or other disclosure under the Act.

Any person who has reasonable grounds to believe that any provision of the Code has been contravened may file a complaint of discrimination with the commission.

The commission, once in receipt of a complaint, is obliged to investigate the matter and endeavour to seek a settlement. Its procedures are set out below.

The Complaint

A commission staff member will discuss the concerns of any person who has reason to believe that this Act has been contravened (the complainant), determine if these concerns fall within the commission's jurisdiction and take the complaint in the form prescribed by the commission.

The complaint will then be registered, assigned to an investigating officer, and served on the person(s) against whom it is made (the respondent).

In order to assist in the rapid determination of the issues, both the complainant and the respondent will be asked to complete a questionnaire. It is in the interests of both parties to complete these documents as thoroughly and as accurately as possible.

Section 6 of the Code provides the right to file or assist in the complaint procedure without fear of reprisal.

Fact Finding Conference

A Fact Finding Conference is normally held shortly after the filing of a complaint. Commission staff will conduct the conference, at which the complainant and the respondent are both present in order to provide their respective views

on the substance of the matter. The purpose of the Fact Finding Conference is summarized below:

- 1) to determine the positions of the complainant and the respondent with respect to the complaint;
- 2) to obtain detailed evidence from both parties of the facts which gave rise to the complaint;
- 3) to provide an opportunity for a settlement of the complaint when the complainant, respondent and commission representative feel it is appropriate.

Extended Investigation

Complaints that cannot be resolved upon the completion of the Fact Finding Conference will usually require a more extended investigation in order to unearth the facts that gave rise to the complaint.

In carrying out the investigation, an officer of the commission may enter onto premises, ask for the production of documents and speak to witnesses who may have information relevant to the complaint.

It is unlawful to obstruct an officer in the performance of these duties.

Formal Conciliation

Upon completion of the extended investigation, the officer will once again meet with both the complainant and the respondent to review the findings in detail. The purpose of these conciliation efforts is to try to arrive at an amicable resolution of the complaint which is satisfactory to the parties involved.

The officer is not, however, empowered to make a final determination of the merits of the complaint.

The Commission

The commissioners, as distinct from the staff, are members of the public appointed by the Lieutenant Governor in Council. They are responsible to the Minister of Labour for the administration of the Code.

For this reason, all cases that are settled are subject to ratification by the commissioners before they may be closed.

Similarly, all cases that cannot be settled are referred to the commission for its consideration of what further action, if any, ought to be taken.

Based upon their review and evaluation of the evidence, the commissioners will make recommendation to the Minister of Labour with respect to the appointment or non-appointment of a board of inquiry.

If the minister does not appoint a board of inquiry, the parties will be advised in writing of the reason for this decision.

Board of Inquiry

A board of inquiry is a quasi-judicial hearing that operates in accordance with the *Statutory Powers Procedure Act*.

The board will hear testimony given under oath and make a finding, based on the evidence, of whether or not the Code has been contravened. If the chairman finds that there has been no contravention, the case will be dismissed. If the finding is that there has been a contravention of the Code, a board order may be issued to provide remedy for the complainant and ensure full compliance with the Code.

Any party may appeal the decision or order of the board to the Supreme Court of Ontario.

Disposition and Settlements

Once the commission is in receipt of a complaint, it is obliged to inquire into the allegations and to seek a settlement through the conciliation process. The settlement achieved must be satisfactory to all parties to the complaint — the complainant, the respondent and the commission itself.

The core principle of settlement is to bring about a fair and satisfactory resolution and to restore the complainant to the position he or she would have enjoyed had the discriminatory act not taken place.

It is also through the conciliation process that the commission clarifies any misunderstandings that gave rise to a complaint and undertakes to eliminate any employment or business practices that deny equality of opportunity to persons protected under the Code.

Tables 1, 2a and 2b show the disposition of complaints and the remedies and settlements achieved in conciliation during 1980–1981 compared with the previous year.

The number of complaints resolved in 1980–1981 totalled 893, which represents an increase of 69 per cent over the previous year. Complaints registered during the year totalled 898. The number of undisposed cases carried forward to 1981–1982 also decreased from last year's total. The growth in productivity is due to a series of new administrative procedures that were initiated during the year, to an increase in staff complement that was allocated to address an increase in caseload volume, and to significant changes in the nature of discrimination revealed in a growing complexity of complaint allegations.

Among newly developed administrative procedures were the establishment of a third Toronto region to deal with the heavy caseload in the metropolitan area, and the reorganization of the intake and complaint registration process. These initiatives resulted in a faster case resolution rate, while the high quality of investigations and settlements achieved was maintained.

In 1979–1980, the percentage of complaints settled had changed markedly from previous years, declining from 87 per cent to 73 per cent of total. (See Table 1). Complaints settled decreased even

further in 1980–1981, representing 51 per cent, or 459 complaints out of the 893 that were closed during the year.

Complaints dismissed totalled 337 (38 per cent) in 1980–1981, which represents a large increase over the total for 1979–1980 of 15 per cent. Traditionally, complaints dismissed numbered only six per cent of total.

Settlements Achieved

Tables 2a and 2b show the settlements obtained in 1980–1981 compared with those achieved in the previous year. One hundred and twenty-four persons received a total of \$192,797 in compensation for earnings lost and out-of-pocket expenses incurred because of discrimination, as well as compensation for insult to their dignity. These figures represent a significant increase over the corresponding figures in 1979–1980, when 71 complainants received a total of \$102,960. Remedies such as an offer of a presently available or future job, housing or facility did not increase in 1980–1981 over the previous year, due to the fact that complainants were successful in many instances in securing alternative employment or housing accommodation.

Settlements during the 1980–1981 fiscal year tended to be more preventative in nature, with 23 affirmative action programs initiated by the employer as part of the settlement (compared with 14 in the previous year) and 889 reviews of and amendments to employment and business policies and practices. Such measures are designed to prevent a recurrence of the problems that gave rise to complaints. In 1979–1980, the corresponding figure was 535. The emphasis on preventative settlement is designed to address a variety of types of systemic discrimination or employment practices that are neutral on their face, but have an adverse impact on groups protected by the Code.

Preventative settlements include policy directives requiring compliance with the Code circulated to the respondent's staff, the review and amendment of any personnel document or practice that reflects a contravention of the Code, and human rights seminars for respondent's staff.

Consultations include a systemic review of employment policies and practices to identify those areas of the business operation containing elements

that have an adverse effect on the hiring, training, promotion and working conditions of minorities and women. In some instances, employers used inadequate methods of recruitment and screening of job applicants, did not provide written job descriptions, and lacked fair and consistent methods of job performance evaluation.

Such practices, they agreed, may allow for subjective and, sometimes, biased assessments of job candidates and employees, thereby permitting factors that are not related to job duties or performance to influence the employer's decisions. While the treatment of complainants may not be found to be discriminatory according to the provisions of the Code, such practices frequently leave an impression in the minds of applicants or employees that they have been victims of discriminatory practices. Frequently, staff consultations will clarify genuine misunderstandings and problems of communication between the complainant and the employer.

Among the records and documents reviewed by the commission, in addition to the casework process, are employment application forms and employment advertising. In 1980-1981, 515 application forms were reviewed and revised, and 184 advertisements were amended. In addition, 5,318 referrals to other agencies were arranged for visitors to the commission whose problems lay beyond the jurisdiction of the Code (See Table 3).

Complaints of Discrimination in Employment

Complaints alleging employment discrimination continue to represent the largest proportion of all complaints resolved. Table 4 shows the breakdown of all resolved complaints according to the section of the Code cited and the grounds of discrimination for 1980-1981. Table 5 contains the corresponding figures for the previous year.

In 1980-1981, 747 complaints of discrimination in employment were resolved, or 84 per cent of a total of 893 cases closed. In 1979-1980, 435 such complaints were dealt with, or 82 per cent of a total of 529 cases.

Settlements achieved in employment complaints are shown in Table 2a. The major proportion of monetary compensation represents settlements

achieved in employment complaints where we find significant losses of earnings due to dismissal from employment or a discriminatory refusal to employ.

In 1980-1981, 111 complainants received a total of \$176,400 in compensation for earnings lost and damages for the humiliation resulting from discriminatory conduct. Seventy-three complainants received an offer of a present or future job. Comparable figures for 1979-1980 are shown in Table 2b, and it can be seen that monetary compensation has nearly doubled from the previous year's amount. In addition, the number of complainants receiving compensation doubled over the period.

Discrimination in Housing and Public Accommodation, Services and Facilities

Table 4 also reveals the number of complaints alleging discrimination in housing and public accommodation, services and facilities. Statistics indicate that 12 per cent of total caseload cited discrimination in these areas. In 1980-1981, 51 complaints of housing discrimination were resolved, or six per cent of total.

The ratio of housing complaints to those based on employment changes according to economic conditions. In periods of industrial and economic growth and low unemployment rates, individuals tend to seek better housing accommodation as their incomes grow and their job security increases. At such times, employment complaints decline in volume and a corresponding increase occurs in the number of housing complaints as more persons apply for, and are denied, housing accommodation. In times of a tight economy, on the other hand, unemployment rates increase, salaries and wages do not keep pace with inflation and individuals tend not to seek alternative housing. Employers become more selective and use discriminatory criteria in their decisions to hire and dismiss employees. This results in an increase in employment complaints and a decline in those based on housing discrimination.

Section 2 of the Code prohibits discrimination with regard to access to public accommodation, services and facilities, and discriminatory terms and conditions with respect to these services or facilities. Traditionally, this section was chiefly used by racial and religious minorities who were

excluded from such public accommodation as hotels and resorts and from a relatively narrow range of services, for example, gas stations and barber shops. Recently, however, the application of this section has been greatly broadened, reflecting the social changes that have been evident in the past decade. In 1980-1981, 51 complaints (six per cent of total) alleged violations of section 2.

In the past several years, complaints filed under this section have alleged discrimination with respect to a wide variety of public accommodation, services and facilities. This reveals a tendency for discrimination to be experienced in many areas of the marketplace. The trend of complaints received in the past five years reflects a creative application of this section of the Code in line with the social policy, which the statute was designed to effectuate. Also, its provisions are being increasingly applied in instances where a social or recreational club exercises exclusionary policies if it can be demonstrated that such clubs are not strictly private in their operations.

Complaints filed under section 2 still, however, reveal patterns of overt discrimination on the basis of race and ancestry in the denial of access to public facilities such as dining rooms, resorts and motels, particularly in areas beyond Toronto. In metropolitan Toronto, three per cent of all complaints alleged violations of section 2 in 1980-1981, while the corresponding figure for other areas of the province was 10 per cent.

Reprisals

Section 5 provides protection for persons who have reasonable grounds to believe that they have experienced discrimination because they have named their employer, landlord, or other persons in a complaint under the Code. Also protected are persons who face reprisal action because they have taken part in any proceeding under the Code, usually as witnesses who provide information concerning a complaint. This section was added because of the commission's experience that fear of reprisal, whether well founded or not, was often a strong deterrent to potential complainants and witnesses coming forward with a complaint or information with a bearing on a complaint. Complainants who alleged discrimination against employers were particularly susceptible to thinly veiled threats of dismissal or more subtle forms of coercion or differential treatment.

In 1980-1981, 22 complaints alleging reprisal action were resolved, more than twice the number of the previous year. Complaints under this section have increased significantly since the time of its enactment: in the period 1962-1977, only 23 such complaints were filed.

Grounds of Discrimination under the Code

Tables 4 and 5 reveal a comparison of complaints on all grounds of the Code in 1979-1980 and 1980-1981.

Race and Colour

Complaints alleging discrimination because of race and colour have comprised the largest complaint category in all years of the commission's operation. Since 1974-1975, these complaints have totalled from 36 per cent to 56 per cent of all complaints resolved. In 1980-1981, they numbered 403 of the 893 complaints closed, or 45 per cent of caseload. This represents an increase over 1979-1980, when 41 per cent of all complaints resolved alleged discrimination because of race and colour.

The high percentage of race and colour complaints shown in commission statistics over time reveals a prevalence of racism or discrimination on the basis of visible characteristics. There is a growing tendency in a period of high unemployment and a tight economy for employers to select job applicants on the basis of physical attributes rather than merit. Here, attitudes are characterized by stereotyping and scapegoating members of non-white minority groups, and blatant discriminatory conduct is the result. This phenomenon is not evident in complaints based solely on nationality, ancestry or place of origin. In 1980-1981, such complaints totalled only eight per cent of caseload.

Discriminatory refusal to employ or dismissal from employment continued to comprise the largest proportion of race and colour complaints: 211 out of the total of 403 complaints on this ground. In 1979-1980, this category totalled 118 of the 219 race and colour complaints resolved.

As in 1979-1980, racial harassment at the workplace was a frequent allegation in complaints during 1980-1981, with 15 persons citing

discriminatory terms and conditions of employment because of race or colour. Many of these complaints allege racial name-calling and harassment of visible minorities in the workplace by co-workers or supervisors. If the employer has had knowledge of such conduct, but has not taken concrete steps to prevent it, the employer, as well as the offender, may be considered to be liable under the Code. In such circumstances, the employer may be obliged to remove the cause of the discriminatory working conditions and to establish and monitor a prohibition against such humiliating conduct or language. When in receipt of complaints of this type, the commission seeks to engage the employer and employees in a human rights seminar and in consultations designed to identify the sources of racial tension and to develop strategies to prevent further occurrences. If there is a union or employment organization, it is also urged to participate in the design of these strategies.

Nationality, Ancestry and Place of Origin

It has been a trend in recent years for complaints on these grounds to decrease as a proportion of the overall caseload. Seventy-one such complaints (eight per cent of a total of 893 complaints resolved in 1980–1981) alleged discrimination on these grounds. An additional 28 complaints resolved were filed by native persons under the grounds of race, colour and ancestry. Of the 28, 25 were filed in the northern region. Most of them alleged discrimination in rental housing and public accommodation.

Sex

Complaints of sex and marital status discrimination totalled 302, or 34 per cent of cases closed in 1980–1981. Of these cases, 261 were lodged by females and 41 by males. Complaints alleging sex discrimination have increased as a proportion of the total over the past two years due to the volume of complaints of sexual harassment in that period. Prior to 1979–1980, complaints based upon sex represented from 23 to 27 per cent of total complaints resolved.

Complaints alleging sexual harassment comprised 10 per cent of all complaints on the ground of sex in 1980–1981, or 32 of the total of 302 such complaints. Of these, 21 were settled, six were dismissed and five were withdrawn by the

complainant. Sexual harassment complaints have represented the fastest growing complaint category over the past two-year period. Nine complainants received a total of \$13,622 in compensation for earnings lost and in damages for insult to their dignity. In 24 instances, the respondent took action to prevent future occurrences of sexual harassment as part of the settlement achieved in conciliation.

Sex discrimination in employment tended to reflect continuing barriers against women in non-traditional jobs, particularly in the skilled trades and production. Refusal to employ or dismissal from employment were cited in 170 complaints resolved in 1980–1981, 165 of them being lodged by women.

Creed

Complaints alleging discrimination on the basis of creed totalled 36, or four per cent of cases resolved in 1980–1981. A significant trend in recent years is a growing tendency for creed-based complaints to allege a refusal on the part of the employer to grant the employee days off for religious observances, where days of worship fall on a day other than Sunday. For the first time in Canada, a board of inquiry decided a complaint of discrimination lodged by a Seventh Day Adventist, whose work schedule conflicted with her Friday evening and Saturday Sabbath (see boards of inquiry, on page 29). The board ruled in favour of the respondent, and the decision is now being appealed to the Ontario Court of Appeal.

A related trend is the denial of employment to members of the Sikh faith, who wear turbans, beards and kirpans as part of their religious practice. These practices frequently come into conflict with safety legislation or employment policies that require employees to wear hard hats, safety masks or uniform caps while at work.

A board of inquiry is now hearing a complaint involving a member of the Sikh faith who was forbidden to wear his kirpan while he was a patient in hospital.

In conciliation, the commission attempts to seek an accommodation between the right of the employee to practise his or her faith, and the employer's need to adhere to work schedules and to

establish other employment policies such as a requirement to wear a uniform, according to reasonable standards of business practice.

If an employment regulation is neutral in its terms, but has the effect of excluding a religious group, the employer must establish that the regulation is reasonably necessary to business operations. If it is not, the employer must try to accommodate employees' religious practices so far as is reasonably possible.

Investigation includes a determination of what accommodations the employer is able to make; the onus rests with the employer to demonstrate that to accommodate the employees' religious practices would work an undue hardship on the business operation. The commission assists employers to develop reasonable guidelines for the granting of time off for holy days other than those on the Christian calendar.

Age

Complaints alleging discrimination in employment against persons because of their age, numbered 73, or eight per cent of cases resolved in 1980–1981. This percentage has been fairly constant since the age provisions were enacted in 1966, although the percentage of total cases alleging age discrimination increased from five per cent in 1979–1980 to eight per cent in 1980–1981. The majority of age complaints alleged an employer's failure to recruit workers aged 40 to 65, and their refusal to employ on the ground of age, with 58 such complaints being resolved from a total of 73.

Boards of Inquiry

If a complaint cannot be resolved to the satisfaction of the complainant, the respondent and the commission, the commission is obliged to recommend to the Minister of Labour whether or not a board of inquiry should be appointed.

The board of inquiry is appointed by the minister under powers provided in section 14a-(1) of the Code. According to section 14(c), the board must decide whether or not any party has contravened the Code. If the board finds a violation, it may order any settlement and remedy that constitutes full compliance, as well as rectifies any injuries

suffered by the complainant. Remedies for injury are of two main types: those that compensate the victim of discrimination for lost earnings, expenses incurred as a result of discrimination and, where appropriate, the offer of the position, housing, public accommodation, services or facility that was denied, and monetary compensation for general damages.

The order may include affirmative action, as well as educative and preventative measures such as human rights seminars and consultations.

Another important function of the board of inquiry is educational. Hearings into allegations of discriminatory conduct create a forum by which the many forms of discrimination can be identified and held up to both legal and public scrutiny. Moreover, decisions are instrumental in the development of jurisprudence.

The number of complaints proceeding to boards of inquiry has increased significantly over the past four-year period. In 1980–1981, as Table 6 shows, 57 hearings were appointed, and 15 were completed. The number of boards appointed in 1980–1981 shows a marked increase over the previous year, when 25 hearings were appointed.

Of the completed boards, seven decisions found for the complainant, and in seven instances, the finding was for the respondent. One board is under appeal.

Complaints of Discrimination

Employment

Case E-6328

An unmarried woman alleged that upon her return from maternity leave, she was demoted and placed in a new position for which she had received little training. Shortly after her reassignment, she claimed that a new supervisor made offensive remarks and sexual advances towards her.

Several weeks later, she was informed that she was being dismissed because of deteriorating work performance. Her complaint alleged discrimination in employment because of her sex and marital status.

During investigation, the human rights officer learned that the complainant had had a good work record during her four years with the company. Evidence also showed that the supervisor had made insulting remarks to two other female employees.

In conciliation, the complainant was awarded full compensation for three months' pay representing the period between her dismissal and her new employment with another company. She also received compensation for insult to her dignity, the total amounting to \$1,615. Written assurances of the company's non-discriminatory policy were communicated to the commission.

Case E-6610

A black Canadian male was referred by a Canada Employment Centre to a suburban Toronto branch of a national retail chain. During the interview, he was asked to provide copies of his citizenship papers and a photograph. When he refused, the interview was terminated. The applicant, believing that he had been discriminated against because of race, colour and ancestry, filed a complaint alleging a violation of sections 4(1)(b) and 4(4) of the *Ontario Human Rights Code*.

The investigation found that company policy required job candidates to perform aptitude tests, produce photographs, references and proof of legal eligibility to work in Canada.

In conciliation, the company agreed to revise its recruitment and hiring procedures and to require proof of eligibility to work in Canada and a photograph only after hiring. Store managers and recruiting staff were advised of the new policy. The complainant was re-interviewed and received an offer of the first available position of management trainee. He accepted the offer and soon began employment with the company.

Case SW-1459

Sexual advances on the part of their employer prompted four Hamilton-area women to file complaints of sexual harassment under section 4(1)(g) of the Code. Three of them resigned because of these advances and one was dismissed because of her refusal to accede to them. The four complaints therefore alleged discriminatory dismissal from employment as well.

The women were employed as kitchen and counter helpers at an outlet of a nationally franchised chain of fast-food restaurants. It was one complainant's contention that her employer 'continuously touched her body and requested to see her alone.' Another submitted in her complaint that he 'asked her continually to go to bed with him,' a third said he once insisted that she come into his office where he locked the door and made sexual advances towards her.

During the investigation, the owner denied all allegations. However, the human rights officer interviewed 26 former employees, and uncovered a pattern of physical and verbal harassment of a sexual nature. Some women recalled that they had been asked into the respondent's office where they were physically assaulted.

When asked why the complainants had been dismissed, the respondent could offer no reasonable explanation based on their work performance.

The franchise chain made its position clear throughout conciliation. The respondent's franchise would be withdrawn if there was unfavourable publicity or if a board of inquiry found that discrimination had taken place.

In conciliation, the case was resolved when all parties agreed to a settlement, which provided:

- cash settlement of \$6,000 to cover back wages for all four complainants, and an additional \$500 each, representing damages for insult to their dignity;
- written assurances that the respondent would comply with the provisions of the Code.

The respondent also agreed to install glass windows in the office doors of management personnel.

All four complainants expressed satisfaction with the outcome.

Case 40-0461

The complainant was one of three women who worked as grade 4 warehouse operators at the Eastern Ontario plant of a multinational pharmaceutical company. Their jobs were phased out and an option was offered of either taking a grade 4 position elsewhere or moving to grade 5 and taking a chance of losing their 'bumping' privileges. The complainant applied successfully for a grade 5 position, but alleged that she was soon the subject of harassment and management pressure. Eventually, she was demoted to grade 1 inspector with the prospect of either accepting the job or being laid off. The woman filed a complaint with the commission alleging sex discrimination in employment in violation of section 4(1)(g) of the Code.

An investigation of company procedures revealed that management believed it was acting properly and in the best interests of the complainant. Yet, evidence uncovered gradual differential treatment of the complainant which took many forms.

It was found that pressure exerted on the complainant aggravated 'an already shaky situation,' and that her supervisors made a concerted effort to increase the difficulty level of her job, assigning her the most arduous tasks in an attempt to prove charges of incompetence.

In arriving at conciliation, the following settlement was agreed to:

- The respondent company agreed to reimburse the complainant the sum of \$1,152.88, the computed difference between her actual earnings based on a 40-hour week and those she would have received had she continued to the grade 5 level.
- The company, in line with commission policy, agreed on an additional \$69.17 which is 6 per cent interest of the above.
- A further award of \$2,000 in compensation for insult to her dignity was granted, which included the complainant's legal fees.
- Agreement that the company would remove from the woman's work record, an incident report relating to extended personal breaks during overtime.
- A re-confirmation with the complainant of the company's policy with regard to overtime assignments in compliance with the *Employment Standards Act*.
- An agreement that Human Rights Code cards would be posted in prominent areas of the premises.
- The respondent company would forward a letter of assurance to the commission.

All parties agreed to the above as a satisfactory resolution of the complaint.

Case SW-1762

The complainant was assigned to a two-week work placement at a Windsor restaurant supply company. He was part of a group recently trained under Canada Manpower's Basic Job Retraining program. The complainant, who is black, alleged that he was called aside and told he would not be part of the placement contingent as there was concern he would be the victim of racial abuse at the company. Finding this disconcerting, the man filed a complaint alleging discrimination in employment because of race and colour in violation of section 4(1)(b) of the Human Rights Code.

Investigation proceedings disclosed the following evidence:

- The respondent company was to provide on-the-job training for a period of two weeks.
- The company conveyed its concern to the job placement counsellor conducting the retraining that ability to ensure proper supervision was curbed by a shortage of supervisory personnel due to illness.
- The company owner stated that because of supervisory staff shortages, he was afraid one of his employees might use the period to conduct a campaign of slurs against the black trainee.
- The company owner stated that a particular employee had caused trouble in the past by vilifying a worker of Italian origin.
- Several employees apparently viewed racial name-calling as harmless joking.
- The respondent did not deny the black trainee a place in his company, nor did he request that he not be sent.
- The decision to send the trainee was that of the job placement counsellor, an officer of a local community college. He was concerned that the black trainee might be subject to abuse based on his conversation with the company owner.
- The job placement officer made the decision not to refer the black trainee with the intention of sending him to an alternative placement site. This, however, did not materialize and he was unable to offer any alternative, even a less suitable one.

In conciliation, a settlement was reached which included:

- an offer to the complainant of the next available job;
- an offer of a two-week work assessment at a later specified time;
- the posting of Human Rights Code cards in the warehouse, dispatching, shipping and office areas of the respondent company;
- a letter of assurance of future compliance with the Code to the commission and a similar letter to the complainant;
- a memo to the company staff concerning company policy on racial name-calling and consequent disciplinary measures;

— a human rights seminar with company employees.

— In addition, the local community college agreed to hold an educational seminar on the provisions and principles of the Code which would be attended by both staff and students of the Basic Job Retraining program.

Case SW-1672

At her interview for a bartender/waitress job at a Windsor restaurant, a married woman alleged she was asked 'What do you look like with your shirt off?' Shortly after beginning her employment at the restaurant, she suffered obscene suggestions and remarks and was once grabbed by the respondent, the restaurant owner. These advances forced her to quit her job and she filed a complaint with the commission alleging discrimination in employment because of her sex in violation of section 4(1)(b) and 4(1)(g) of the Code.

The commission's investigation revealed the following:

- No witnesses observed either the physical contacts or the sexual innuendoes mentioned in the woman's complaint.
- However, 11 female witnesses came forward with testimony similar to the complainant's.
- Evidence was given that the respondent would stand in front of female employees and expose himself.
- Evidence from two other female employees indicated that they had been asked by the restaurant owner to remove their blouses 'to see what their busts looked like.'
- Evidence was offered that the owner would sit with his female employees and make sexual comments. Staff members said his conversation always centred around sex.
- The owner admitted making a comment to the complainant on one occasion, but said it was done only in a joking fashion.

During conciliation, the following items of settlement were agreed to.

- The woman received three months' lost wages, a total of 12 weeks at \$100.00 per week to the amount of \$1,200.00.

- She also received tips for 12 weeks' work amounting to \$20.00 per week for total of \$240.00.
- She received 6 per cent interest on both lost wages and tips amounting to another \$86.40. Total out-of-pocket expenses incurred because of discrimination was \$1,526.40.
- An award of \$1,500.00 representing compensation for insult to her dignity resulting in total monetary payment of \$3,026.40.
- The respondent sent a letter of assurance to the commission stating that he would comply with the Code in future.
- He posted Code cards on the premises.
- The respondent accepted the suggestion that structural changes be made to the office by installing plexiglass in the office door at normal eye level.

Case W-6897-A

A 56-year-old Toronto accountant alleged that he was denied a position with a manufacturing company solely because of his age. He believed this to be a violation of section 4(1)(a) and 4(1)(b) of the Code.

Investigation showed that the parent firm in the United States had instructed the hiring of a 'younger' man to replace a 72-year-old manager. Head office was apprised of the provisions of the Human Rights Code with regard to recruitment and hiring practices.

After several months of negotiations, the company hired a middle-aged executive from the 'Forty Plus' organization. The complainant, who had secured alternative employment, was advised of this, and he gave his instructions that the case be closed.

The case was resolved and closed after the company's lawyer provided assurances of his client's non-discriminatory policy.

Case 30-1003-F

A woman applied for a hardware sales position at a Thunder Bay lumber yard and was advised that there were two jobs available: one was 'for a man' which paid \$800 a month and required heavy lifting, and the other was open to women at \$600 a

month, no lifting was required. The woman wanted the higher paying job and when she was denied it, she filed a complaint with the commission alleging discrimination because of sex in violation of section 4(1)(b)(e)(g) of the Code.

Investigation confirmed that there were two open positions at the lumber yard at the time she applied. The manager admitted telling the complainant: 'Actually, I'm looking for two people for the jobs — a man and a woman.'

Subsequently, the manager was advised that he could hire only one person. He decided on a man because he could be of service in heavy lifting. A man was eventually hired over the complainant, but he had less experience than she had, and he was started at \$775 a month.

The manager admitted it was his personal policy not to allow women to do lifting. This admission was confirmed by staff.

The woman had worked in a similar department of a competitor's lumber yard for several months.

In conciliation, the employer agreed to the following:

- payment of lost wages amounting to \$500.00;
- the forwarding of a letter of assurance of future compliance with the Code to the commission;
- the monitoring of the lumber yard's employment practices by the commission for a period of one year.

Case SW-1596

A man applied on several occasions for a job as an ECG technician at a London hospital, and was never granted an interview. He filed a complaint with the commission, alleging discrimination in employment on grounds of sex, in violation of section 4(1)(a) and 4(1)(e) of the Code. His complaint alleged that a supervisor had told him that it was hospital policy not to hire males for positions in that department.

The investigation findings indicated:

- The complainant had applied for and updated his application for ECG technician on five occasions.

- Although not a fully qualified ECG technician at the time of his application, he had received his certification in time for his first update.
- During the period of his applications, two vacancies occurred in the hospital's ECG unit. One was filled by a dietitian accepted as an ECG trainee, the other by a person described as a 'qualified specialist'. Although one of the vacancies was filled by an outside candidate, the hospital did not consider any of the applications on file.

Hospital staff denied the complainant's allegations, but evidence showed that few men apply for positions there, and none had ever been hired.

Proposals that were agreed to in conciliation were:

- that the respondent should forward a letter of assurance to the commission;
- that a similar letter of assurance be sent to the complainant;
- that a memo be posted to all staff at the hospital indicating availability of all positions to both sexes;
- that cards explaining the provisions of the Code should be posted at the hospital.

Not inclusive of the terms of settlement, but accepted by the hospital, was the commission's efforts to arrange two-day workshops on human rights for hospital staff.

The commission received an expression of satisfaction from the complainant at the outcome of the proceedings.

Case SW-1667

The complainant, a woman experienced in plant and mill technology, applied for any one of three positions at a Hamilton steel mill: process technician, tin miller or labourer. Her application went unanswered. After months of waiting she filed a complaint with the commission alleging discrimination in employment on the basis of sex, in violation of section 4(1)(a,b,e) of the Code.

The commission's officer found that the woman had worked for 18 months as a process engineer at a major Canadian crude oil refinery. The respondent company claimed that the woman's preferences for a position were not clearly stated.

However, the employer agreed that the selection process was arbitrary, although he claimed that women were not deliberately excluded from employment. The commission learned that of 67 persons hired during the month in question, none were female.

After being served with the woman's complaint, the company reviewed her application and qualifications and came to the conclusion she was best suited for their utilities department. However, only one opening came vacant during the fall season, and a male applicant's qualifications exceeded those of the complainant.

In conciliation, the following settlement was reached:

- An offer of a job was made to the complainant, which she accepted.
- A press release on the settlement was issued.
- An affirmative action program for women was instituted.

Case SW-1721

A male graduate of a restaurant service course answered an advertisement at a Canada Employment Centre for a counter person at a Windsor food and cafeteria service. In a complaint filed with the commission, he alleged that he was told that men are 'never hired here,' which he believed to be in violation of section 4(1)(a), 4(1)(b), and 4(1)(g) of the Code.

Evidence gathered during investigation revealed that:

- The company had hired only women in the past.
- The employee who made the 'no males' statement to the complainant, admitted it. But the company maintained she was only expressing her observation that males had never worked there, and it was not company policy to exclude them.
- The same statement was made by the same employee to another unsuccessful male applicant.
- Cafeteria patrons and staff who were interviewed during investigation felt there would be no particular difficulties if a male were working on the counter.

- The complainant was qualified by virtue of a grade 12 course which he completed with a high 80s average. His teacher felt he was an intelligent and capable person.

In conciliation, the following proposals of settlement were agreed to:

- A nearby high school giving instruction in culinary arts and food preparation and the respondent company would establish a liaison, and graduates of the school would be considered for employment regardless of their sex.
- The respondent would send a letter of assurance to the commission and a copy to the Canada Employment Centre in Windsor.
- The company would post cards explaining the Human Rights Declaration of Management Policy.
- The company would forward a letter of apology to the complainant and a copy to the commission.
- The company agreed to pay the complainant for eight weeks' loss of part-time work at 12 hours per week at the rate of \$2.85 per hour.
- The respondent agreed to pay the complainant an additional \$126.40 in damages for insult to his dignity. Total: \$400.
- The company would make an offer of employment to the complainant.
- The company arranged with the commission for a staff seminar on human rights.

Case 40-0538

An unmarried worker alleged he was told that the reason for his layoff from a Kingston factory was because he was the only single employee in the section. He filed a complaint alleging discrimination because of marital status in violation of sections 4(1)(b) and 4(1)(g) of the Code.

The commission's investigation confirmed that of the seven employees laid off in the complainant's section, two were married and five were single. The complainant did question the reason for the layoff, and the majority of those interviewed at the plant confirmed the answer he received was that married men had more responsibilities and associated expenses than single men, and for that reason should be kept on.

The evidence also indicated that two married men were kept on, although one had only been with the company a week and the other three weeks. The complainant had been employed by the company for five months.

The commission learned that marital status was only one of several criteria used in making temporary severance decisions. Other criteria were length of service, type of work performed, work performance since employment and, more importantly, the amount of work that remained to be done during the layoff period.

A review of evidence indicated there was sound reason for the layoff of one of the married men, less so for some of the single men.

In conciliation, an agreement was reached which included the following:

- that the respondent pay the complainant for two weeks' lost wages, which amounted to \$391.61 after normal deductions and four percent vacation pay were subtracted.
- that the respondent give the complainant the opportunity to compete with other candidates on an equal basis for future employment opportunities with the company. (The complainant was not contesting for his former job as he had obtained another).
- that the respondent write a letter of assurance to the commission indicating knowledge of the provisions of the Code, and intention to abide by the spirit and letter of the Code;
- that the respondent post a Code card on company premises.

Case SW-1729

It was the policy of a London taxi company that their women drivers be off the road by 6:00 in the evening. This rule prompted a female driver to file a complaint alleging discriminatory conditions of employment because of sex in violation of section 4(1)(a) and 4(1)(g) of the Human Rights Code.

During investigation, an attorney for the company confirmed the practice of curfews for women drivers, and requested clarification of the provisions of the Code. Subsequently, the investigating officer, counsel for the company and the aggrieved party came together in conciliation.

An agreement was reached that the employer would:

- furnish a letter of assurance to the commission indicating that the company acknowledged, understood and would comply with the provisions of the Code;
- post Code cards on the company premises;
- declare that all driver employees have equal employment opportunities regardless of sex and notify all employees of the policy.

The complainant expressed her satisfaction with the commission's intervention, and the case was closed.

Case W-5863

A Brampton man who had recently converted to Seventh Day Adventism filed a complaint with the commission when his employer disallowed a shift change arranged with a co-worker that would enable him to observe the Friday evening and Saturday Sabbath. In addition, the company would not permit him to use vacation time to avoid work on these days. His complaint alleged discriminatory terms and conditions of employment because of creed in violation of section 4(1)(g) of the Code.

The complainant joined the company in 1970 as a machine operator and became an Adventist some eight years later, a decision which rendered him unable to work from sunset Friday to sunset Saturday.

During investigation, it was found that the man's informal arrangement with a co-worker to trade shifts, which allowed him Fridays and Saturdays free, ran smoothly until a scheduling problem occurred. The company then called a halt to all shift changes, and the complainant then decided to take Friday evenings off without company permission.

The company's position was that shift changes created scheduling and production problems. The employer did not see the complainant's religious needs as presenting a special case. Also, policy regarding shifts was in compliance with the collective agreement.

In interviews with the complainant, the investigating officer made the commission's position clear: on the issue of time off, the employer is expected to accommodate the worker's request for time off unless the company can show that to approve the request would place undue hardship on the company or other employees.

The complainant had been disciplined through suspension and had been docked for days taken off without permission.

As a result of the officer's discussions with company officials, the employer agreed to re-examine the collective agreement. The shifts clauses were interpreted to enable shift changes on a day-to-day basis or on a two-week block time basis provided adequate notification was given. The company left it to the employee to find a short-notice replacement.

In conciliation, the complainant said he would accept the arrangement if the company agreed to let him take holiday time off or leave without pay should he not find a replacement, but the company did not accept this proposal.

The employer then agreed to the following:

- that the complainant would be allowed to enter a permanent arrangement with a co-worker, on a voluntary basis, by means of which he will work night shift for the co-worker and the co-worker will work afternoon shift for him;
- that the complainant would be cleared of two previous suspensions imposed when he missed work on Friday evenings as a result of not being able to find a co-worker willing to exchange shifts with him on a one-day basis as stipulated by the company.

The company reserved the right to insist that the complainant file a formal request for a shift-change at the time he is to go on evening shift rotations. This request would be automatically approved, if there were no variations from the above terms of agreement.

Also, the company agreed to discuss with the union the collective agreement clauses relating to discrimination and, if the parties concur, this new arrangement would be included in those discussions.

As the complainant had also filed a union grievance against the company, both parties decided to await the decision of the arbitration board. The collective agreement did not provide an article dealing specifically with religious discrimination and the grievance was filed on the grounds of unfair suspension.

The arbitration board ultimately found in favour of the complainant and ruled that he receive compensation for earnings lost. He expressed his satisfaction with the outcome of his complaint to the commission, and the case was closed.

Case 30-0941

Omission from a family's short list of 'committed Christians' considered suitable to manage their business interests prompted the rejected job candidate, an experienced executive from Northern Ontario, to file a complaint under section 4(1)(a)(g) of the Code alleging discrimination in employment on grounds of creed.

In his complaint, he explained: 'I am not affiliated with any formalized religion. I have reason to believe that this company refused to employ me and established and maintained an employment classification that, by its description or operation, excluded me from employment because of creed.'

Investigation of the complaint revealed that the man had applied for employment with the family business in response to a newspaper advertisement placed by an executive recruitment firm.

A month after making his application, the complainant was informed by the agency that his credentials were in order and his qualifications satisfactory. According to the complainant, the caller then proceeded to ask questions about his religious beliefs and practices.

When the candidate failed to secure the position, he filed a complaint against the agency under section 4(4) of the Code.

The agency maintained that at no time did it ask questions of interviewed applicants about the subject of religion. But applicants were told that the austerity of life style incumbent in the position might not be suitable for persons whose habits included smoking, working on Sundays and

drinking alcoholic beverages. These, the agency made apparent to applicants, were habits frowned upon by company management.

The respondents told the investigating officer that the family had started the business and built it from a small operation to one with nearly 100 employees. The hiring of a manager was a novel experience and there was concern whether the person hired had religious values compatible with those of the employer.

Further investigation revealed that a member of the family had been warned by the agency that the company could not advertise for a 'committed Christian' as this would be in violation of the Code. Several prospective candidates had been advised that should the subject of religion be raised, they should evade it.

Three of seven candidates interviewed had indicated at some point in their interview that the question of religion did arise. A past employee told the officer that no direct demands had been put on him with regard to religion, but he was approached many times about joining the faith.

In conciliation, the following items were agreed to by all parties:

- An award to the complainant of \$1,000 for lost earnings.
- A letter of assurance to the complainant and commission that the company understood and would abide by the spirit and letter of the Code.
- The commission would monitor the hiring policies of the company for a year.

Case E-6770

A married couple were employed at the same suburban Toronto company. When their marriage failed and they were forced to separate, the wife sensed a coolness on the part of a superior, a vice-president and friend of her husband. The situation eventually resulted in her dismissal and she filed a complaint with the commission alleging discrimination in employment because of her sex and marital status in violation of section 4(1)(b) and 4(1)(g) of the Code.

Evidence revealed that until her separation, the company appeared satisfied with her work performance. On learning of her separation, the vice-president made the decision that the complainant had to get another job or face dismissal. Her husband had not been given a similar ultimatum.

The company claimed that the decision to dismiss the complainant was made on the basis of seniority. At the time, the wife's seniority was less than her husband's.

Following conciliation, the complainant received the sum of \$2,000, in compensation for earnings lost as a result of her dismissal. The complainant expressed her satisfaction with the outcome and the case was settled.

Case SW-1748

In March 1980, a Canada Employment Centre referred a 56-year-old woman to a Windsor insurance agency for a job as a receptionist-typist. She had recently completed a Manpower Training course in business. Upon telephoning the employer, she was asked her age and then told, 'This is a job for a younger person.' She was asked to leave her number in case they could find no-one younger. Believing that this was discrimination because of age, the woman filed a complaint with the commission alleging a violation of sections 4(1)(a) and 4(1)(e).

The following evidence was gathered in investigation:

- The woman chosen for the job was 18 years old.
- The respondent denied using such expressions as 'new blood' in her conversation with the complainant. She stipulated that asking a person their age was simply a psychological tool ('On the phone I can't tell their personality so I ask their age.').
- A 40-year old applicant said she was told that she was too old for the job, and a 37-year old was informed that the company wanted a younger person. A 21-year old who received an interview felt her 'right' age was the most important factor.

In the conciliation, the company agreed to the following:

- to post the Human Rights Code Declaration of Management Policy in the office;
- to forward a letter of assurances of compliance with the Code to the manager of the Canada Employment Centre in Windsor and to the commission;
- to compensate the complainant in the sum of \$300.00 representing damages for insult to her dignity.

The complainant expressed her satisfaction with the outcome and the case was closed.

Case SW-1386

A married woman was told by a male employment officer at a London manufacturing company that the job she had applied for probably will go to a single male, as they had proven to be 'less troublesome.' The woman filed a complaint with the commission, alleging discrimination because of her sex and marital status in violation of sections 4(1)(b), and 4(1)(e) of the Code.

During the investigation, the employment officer in question confirmed his reservations about hiring females. His particular concern was to avoid hiring a woman who may take time off because of family obligations.

At a conciliation meeting, the company agreed to offer employment to the woman. However, she had secured another position in the interim, and declined the offer.

Further conciliation resulted in compensation for earnings lost in the period before the complainant began her new job, and she received the sum of \$100.00. The company also forwarded to the commission a letter of assurance that it would comply with the provisions of the Code.

The case was then closed as settled.

Housing Accommodation

Case 30-1007-F

On February 20, 1980, a native Indian woman inquired about a three-room apartment situated over a Thunder Bay grocery store that was advertised in the newspaper. The landlord, who was also the store owner, told her the flat was already rented. Later, the woman learned the apartment was still available. Believing she had been discriminated against in occupancy of housing because of race, colour and ancestry, she filed a complaint with the commission alleging a violation of section 3(1)(a) and 3(1)(b) of the Code.

The investigative findings disclosed that a non-native woman applied for the apartment the day after the complainant and found it was available. The non-native woman inquired again six days later and was shown the still vacant apartment. She decided not to take it.

The apartment was not rented until March 10th, at which time another non-native woman entered a deposit to secure the premises.

Evidence indicated that the landlord had no native tenants at the time of the incident and had no recollection of ever renting his premises to Indian people.

Conciliation resulted in:

- a letter of assurance to the commission that the landlord would comply with the Code in future;
- the posting of Code cards at the landlord's grocery store;
- notification to the commission of all apartment vacancies under \$275 a month in advance of any other advertising for a period of one year;
- a sum of \$400.00 to be paid to the complainant as out-of-pocket expenses and compensation for insult to her dignity;
- a letter of apology to the complainant.

Case E-6277

Rejection without explanation of her parents' application for a Toronto apartment spurred a black woman to file a complaint on behalf of her parents alleging discrimination in housing accommodation on the grounds of race and colour in violation of section 3(1)(a) of the Human Rights Code.

During investigation, building management claimed that the couple were not financially qualified, and that race was not a factor in the decision.

However, an evaluation of four application forms filled out by tenants who had rented in the building since the couple had applied revealed that not all were financially more qualified than the complainant's parents.

A survey of the apartment block brought forward only one black tenant. She had resided in the building for two years and had noticed only one other black family during this period of time. Her treatment, though she had never met the building management, had not been unusual.

The complainant pointed out that she might not have instituted proceedings against the building management had she been given a civil explanation of why her parents had been turned down. The respondents, in turn, stated that they had no such obligation under the *Landlord and Tenants Act*.

After numerous attempts at conciliation, the building management agreed to state in writing that the company practices a policy of non-discrimination. Other settlements follow.

- Management also agreed that truthful explanations would henceforth be given to rejected applicants for tenancy.
- An apology was extended to the complainant and her parents for any inconvenience they may have suffered.

- The complainants received a cheque representing compensation for the difference between the apartment they had applied for and the alternative accommodation they took (\$88, or \$11 monthly for eight months) as well as \$100 in compensation for insult to their dignity.

The complainant and her parents expressed their satisfaction with the outcome, and the case was closed.

Case 30-1017

A black woman and her son inquired about a vacant apartment in a Northern Ontario city. When she went to look at it, she was told it was already rented. The following day she heard of another place that might be suitable only to find it was the same apartment. She filed a complaint under section 3(1)(a) of the Code alleging discrimination in housing accommodation because of race and colour.

In the course of investigation, the complainant told the human rights officer about her meeting with the landlady, her subsequent discussion with a white co-worker, who insisted the flat lay unrented a day *after* the complainant had been refused and her telephone conversation with the landlady a day later.

Evidence gathered during investigation indicated the following:

- The apartment was unavailable one day, but for rent the next. It was leased five days after the complainant's inquiry.
- The landlady explained that the new owner (the building was in the early stages of being sold) wanted the building either 'all white or all black.' The new owner categorically denied making this statement.
- A signed statement from a witness revealed that the landlady phoned her and rebuked her roundly for sending a prospective black tenant. This account was corroborated by a second witness.

In conciliation, the landlady agreed to:

- send letters of apology and assurances of her willingness to comply with the Code in future to both the complainant and the commission;
- contact the commission should she have apartments for rent within the next 12 months.

Public Accommodation, Services and Facilities

Case SW-1400

The speech pattern and accent of a student from Trinidad attending a London community college posed a barrier to his entry into a media instruction course, according to a complaint which he filed with the commission. The student alleged discrimination on grounds of race, colour, ancestry and place of origin in violation of section 2(1)(a) and 2(1)(b) of the Code.

In his complaint, the student said he had been assured of entry to the media course upon completion of a general arts program. He had originally attempted to enter directly the school's radio arts program, but was rejected. However, his later impression was that upon completion of the general arts segment, he would be eligible to elect any program of his choice, including media arts. His complaint made reference to his accent as the primary reason for rejection despite a clear stipulation that he was training for media work in the Caribbean, where his accent would present no barrier.

The complainant then lodged a grievance through the college review system, without success.

Investigation provided corroborating evidence that the complainant had reasonable cause to presume that he had been assured entry to the radio broadcasting program if he fulfilled the requirement of a year in general arts.

Radio broadcast instructors generally concurred that complainant's accent had been a matter of discussion among them and was a reason for refusing the complainant entry to the program.

Conciliation proposals were made and accepted, resulting in:

- a cash settlement of \$2,500, which included \$1,000 for a refund of the complainant's fees and \$1,500 in compensation for insult to his dignity;
- a letter of assurance to the complainant that the college would comply with the Code in future;

- the development of an educational session to be arranged with the joint co-operation of the college's faculty of radio broadcasting and the commission.

Case 30-0980-F

In separate incidents, two native Indians appeared at a Timmins hotel with either telephone or telex reservations. They were told, however, that no rooms were available and, unfortunately, their bookings were never confirmed. Their complaints alleged discrimination in public accommodation because of race, colour and ancestry in violation of section 2(1)(a) and 2(1)(b) of the Human Rights Code.

One of them had previously made reservations for his non-native employees and had never had a problem when the hotel had not confirmed them.

The investigation revealed that the hotel's reservation system had been experiencing problems that were affecting all patrons, non-native as well as native.

However, further evidence revealed that the company *did* have a policy of discrimination against native people, both in acquiring a room and in the terms of occupancy.

In the instance of one of the complainants, the excuse given at the front desk was that her reservation could not be found. Her telex was later produced and a check of records indicated that 93 rooms were vacant that evening.

Conciliation was conducted, and the parties signed a memorandum of agreement that contained the following terms of settlement:

- A declaration of hotel policy to abide by the provisions of the Code would be given to its staff.
- A letter of apology from the hotel to the complainants, as well as a complimentary weekend reservation for them and their families.
- A human rights seminar with the hotel staff.

Shortly afterwards, a new manager responsible for operations and customer relations was hired.

Case SW-1403

A Southwestern Ontario recreational club offered a special lower rate to women designed to attract additional members during off-peak hours. A male member filed a complaint alleging that the 'female only' rate in a public facility was discriminatory on the basis of sex and a violation of the Code's section 2(1)(b).

During investigation, the club admitted that it was its practice to charge females a reduced rate in off-peak hours for both membership and the use of recreational facilities identical to those used by males at the full rate. Management maintained that the club was underused during conventional business hours, and since women were usually more able to rearrange their schedules than men, it was the club's practice to offer reduced rates as an inducement for women to join. Both males, at full rates, and females, at reduced rates, were free to use the facilities at any time of the day. But men, even if they were free during business hours, received no rate reduction.

The parties agreed in conciliation that:

- The club would amend its pricing and membership policies to discontinue differences based on sex.
- A letter of assurance would be provided to the complainant, stating the club's non-discriminatory policy.

The complainant expressed satisfaction and the case was closed.

Case 30-1049

Five native Canadian Indian women visited a Timmins Chinese restaurant as a group. They were refused service, and a waitress remarked: 'Indians aren't going to be served in this restaurant anymore.' Believing this to be discrimination in public accommodation, the women filed complaints alleging that the denial took place because of their colour and ancestry, in violation of sections 2(1)(a) and 2(1)(b) of the Code.

During investigation, several witnesses confirmed the evening's events. They had heard the waitress tell the women they weren't going to be served.

The incident that gave rise to the remark stemmed from previous misconduct by another Indian patron.

Although this matter was resolved, Indians were not served after the incident, while whites were. No other Indian customers had caused a disturbance on the premises.

The restaurant owner told the officer that its manager was not on duty that evening. Its policy before and since the incident had been one of equal treatment to all patrons. This was confirmed by even the complainants, who had returned to the restaurant since and been accorded service.

In conciliation, the respondent agreed to the following:

- A letter would be sent to the president of Grand Council Treaty #9, advising them of the restaurant's policy and extending an invitation to all to enjoy the establishment's hospitality.
- A Human Rights Code card would be posted on the premises
- A declaration would be made by the owner that he would personally advise staff to uphold the provisions of the Code and circulate a memo among his employees to that effect.

Settlement was considered appropriate by all parties and the case was closed.

Boards of Inquiry Decisions 1980-1981

Simpson-Sears Ltd. (Kingston) and Vincent

Mrs. Vincent's reluctance to work on the Seventh Day Adventist Sabbath had resulted in her demotion from full-time to contingent worker at Simpson-Sears in Kingston. She filed a complaint with the commission alleging discrimination in employment because of creed contrary to section 4(1)(g) of the Code.

In her complaint, Mrs. Vincent detailed her association with Simpson-Sears which dated back to 1971. Evidence gathered during the investigation indicated that her work record was satisfactory.

Full-time clerks are required to work two Saturdays in a row with the following Saturday off, a week-day off being substituted for the Saturday worked.

Mrs. Vincent had recently converted to Seventh Day Adventism, and a precept of the denomination is the observance of Sabbath from Friday evening until sunset Saturday. Mrs. Vincent was informed she could no longer maintain full-time status if she did not report for work on these days, and as a result she lost a number of benefits and experienced a resultant loss in pay of almost 50 per cent.

Because satisfactory settlement could not be achieved through conciliation, the commission recommended to the minister that a board of inquiry be appointed in accordance with the provisions of the Code. Chairing it was Professor E.J. Ratushny of the Faculty of Law, University of Ottawa. The hearing was convened on April 10, 1980, in Kingston.

In its decision, the board pointed out that at first glance, a condition of employment requiring *all* employees to work on a certain day does not appear to discriminate since these terms affect all employees equally.

However, to look no further would permit the imposition of conditions of employment that would have the practical result of precluding all employees of a particular minority group. The board then had to determine how far an employer

must go in accommodating the religious beliefs of an employee in order to avoid a contravention of the Code.

Counsel for the respondent argued that in order to prove contravention of the Code, motives of malice, bigotry or bad faith would have to be proven.

The board disagreed and suggested that in this case the absence of a motive to discriminate would not justify the discriminatory consequences. Citing precedent, it noted that the discriminatory *result* is prohibited, not intent.

The board examined section 4(1)(g) of the Code, which provides that no person 'shall discriminate against any employee with regard to any term or condition of employment' because of creed, and indicated this section could be applied in Mrs. Vincent's complaint.

However, reservations were raised by the board about attempting to impose an onus of proof upon an employer to meet a specific standard of undue hardship in the absence of any specific legislative basis. The board then applied the general standard of whether the employer had acted reasonably in attempting to accommodate the complainant in light of the circumstances of the case.

Taking into account the evidence and the scope and purpose of the Code, the board concluded that the commission had not satisfied its onus to demonstrate that the respondent had acted unreasonably in its dealings with the complainant.

The board then ruled that Simpson-Sears 'could not be said to have acted unreasonably in not creating a unique position for Mrs. Vincent that would accommodate her religious needs. To do so would have deprived the employer of the most valuable aspect of the contribution of the full-time sales employee, namely, availability during the most crucial selling periods of Friday evenings and Saturdays.'

The commission is appealing this decision to the Ontario Court of Appeal.

Domglas Ltd. and Singh

Mr. Singh was dismissed from his employment with Domglas Ltd. in Bramalea. He filed a complaint with the commission under section 4(1)(b) of the *Ontario Human Rights Code* alleging discrimination in employment on the grounds of creed, colour, nationality, race and place of origin. He also alleged that he had been subjected to racial slurs in the workplace in violation of section 4(1)(g) of the Code. Mr. Singh is of East Indian origin.

The respondent claimed that Mr. Singh had been dismissed because he had committed physical assault against a co-worker.

When conciliation attempts were unsuccessful, the commission recommended to the minister that a board of inquiry be appointed in accordance with the provisions of the Code. The board of inquiry, under the chairmanship of Professor Robert W. Kerr, of the Faculty of Law, University of Windsor, convened in Toronto on May 28, 1980.

Early in the hearing, the respondent challenged the board's jurisdiction on the basis that the matter was *res judicata*, thus placing the respondent in a position of double jeopardy. Mr. Singh had previously lodged a grievance against his dismissal under the collective agreement in 1978, claiming discharge without just cause and discrimination during the course of employment.

An arbitration board concluded that there was just cause for disciplining Mr. Singh but it reduced the penalty of dismissal to an eight-week suspension.

The board of inquiry ruled that the arbitration decision had not dealt with the issue of discrimination, and that 'the rights dealt with by an arbitration board arise under a collective agreement, while the rights before a human rights board of inquiry are created by statute. The rights created by the Code may be separate from those decided by the award.'

The board then turned to an assessment of evidence introduced by both parties. It observed that Mr. Singh was dismissed for a first incident of

assault, despite a clean record, while other employees had simply been suspended in similar circumstances.

The respondent testified that it had already planned to introduce a policy of stronger discipline in employment-related assaults, and the board concluded that implementation of these measures had begun with the complainant's dismissal.

Moreover, evidence revealed that white employees also faced dismissal under these circumstances, and that the co-worker who provoked the complainant with racial slurs had been disciplined.

The board therefore found no violation of section 4(1)(b) of the Code.

On the issue of racial abuse, the board recognized that racial name-calling did occur at the company and held such harassment to be inherently discriminatory because it singles out its victims on the basis of race or ethnic origin. However, the name-calling was done by non-supervisory personnel and the board concluded that the respondent was not aware of it.

Although the complainant was dismissed, the board stated that it would be 'in the respondent's own interest to institute a human relations program' in order to deal properly with similar incidents that may arise in future.

Liquor Control Board of Ontario Brockville Shopping Centre Store and Hendry

Mrs. Hendry, who had worked for several years as a part-time employee in the LCBO's Brockville Shopping Centre store, was dismissed from her employment in May 1977. She filed a complaint with the commission against the LCBO, alleging a contravention of sections 4(1)(b) and 4(1)(g) of the Code.

In her complaint, she claimed that her application for full-time employment had not been considered and she had been laid off in August 1976, yet new

part-time employees were being hired in September. She further alleged that she was given little work while her male counterparts with less seniority received more. She had been laid off once before, in 1976, but following her appeal to senior management, she was rehired. Mrs. Hendry believed that she had experienced discrimination in employment because of her sex.

During the investigation, the commission learned that her employer was pleased with her work and kept her on through the early part of the year when most other part-time clerks were laid off. However, evidence revealed that from January to May 1977, Mrs. Hendry received very little work. She averaged only five hours a week while a male part-time clerk averaged 28 hours a week.

Since a satisfactory settlement of the complaint could not be achieved through conciliation, the commission recommended to the minister that a board of inquiry be appointed in accordance with the provisions of the Code. The board, under the chairmanship of Professor D.A. Soberman, of the Faculty of Law, Queen's University, convened in Brockville on December 10, 1979.

Although the parties were in agreement about work assignments and layoffs, Mrs. Hendry claimed that as a woman she was discriminated against by the management and staff of the LCBO.

In response, the respondent testified that although Mrs. Hendry was an energetic and diligent worker, she was 'bossy and aggressive' and her presence affected morale and production. Senior management admitted that they had refused to consider her for permanent employment because of this. Counsel for the commission told the board that 'what may be seen as aggressiveness in a woman might be seen as energy and ambition in a man, according to traditional male-female stereotypes.'

The board of inquiry reviewed evidence that much of Mrs. Hendry's difficulty with her employers and co-workers was the result of their disapproval of a woman employed as a clerk in a liquor store, particularly a woman with management aspirations. The board concluded that 'in helping to change traditional views of roles for men and women, employers — especially in large institutions — must bear the main burden of change.'

Further evidence revealed that the respondent had asked Mrs. Hendry to undergo a medical examination to ensure her ability to continue heavy lifting duties. Her doctor stated that she was physically and mentally capable of employment on a regular basis with the LCBO.

The board found that Mrs. Hendry was refused continued employment and dismissed because of her sex.

Concerning the allegation that the complainant had been refused full-time permanent employment, the evidence revealed that her application was never seriously considered. The board of inquiry commented upon the historical evidence that employment with the LCBO was within the discretion of the current government in power.

Applications for full-time employment, however, are processed at the LCBO's Toronto headquarters, but here, recruitment and hiring appeared, from the evidence, to lack systematic and careful procedures for the examination of applicants on a comparative basis. Counsel for the commission introduced statistics to substantiate the LCBO's very poor record in hiring women, particularly in its retail stores. There, women comprised a percentage of the total workforce of from .65 to 2.87 in the period 1974 to 1979.

The board also found discrimination in respect to Mrs. Hendry's application for full-time employment. Having found a breach of the Code, the board ordered the following.

- Compensation of \$2,266.44 for earnings lost by Mrs. Hendry as a result of discrimination.
- Damages of \$8,000 for insult to her dignity.
- A letter of apology.
- Posting of Human Rights Code cards in all LCBO retail outlets.
- An affirmative action program for women to be co-ordinated by the Women Crown Employees Office.
- Monitoring of the respondent's employment practices for one year.

Canadian Rubber Dealers and Brokers (Champlain Truck Stop and Restaurant and Peterson, Carter)

Mrs. Carter and Mrs. Peterson filed complaints with the commission, alleging dismissal from their positions as waitresses at the Champlain Truck Stop and Restaurant, near Bowmanville, because of their age in contravention of section 4(1)(b) of the *Ontario Human Rights Code*. They were in their early 50s and had been employed for a month.

Since the commission was unable to reach a satisfactory settlement during conciliation, it recommended to the minister that a board of inquiry be appointed in accordance with the provisions of the Code. The hearing, chaired by Professor Ian A. Hunter of the Faculty of Law, University of Western Ontario, convened in Bowmanville on October 3, 1980.

Several attempts were made to contact Mrs. Peterson prior to the hearing, but she could not be located. Because counsel for the commission could not proceed with her complaint, it was dismissed.

Mrs. Carter testified that her age posed no barrier at the time of her interview. She was not aware of any dissatisfaction with her work performance.

However, her employer described her work as slow, though he admitted that he had never discussed any work-related problems with her.

Much of the evidence turned on a conversation in the restaurant lobby between Mrs. Carter and her employer, following which, she was given notice. Mrs. Carter alleged that her employer said restaurant patrons had complained about 'two old ladies working on the night shift,' and she was being dismissed because of her age. In the employer's account of the conversation, age was not mentioned. Rather, he indicated that the two women quarrelled on the job and there were problems with their work performance.

Two witnesses who overheard the conversation confirmed the respondent's account. A visitor to the restaurant testified that she had seen the two

women arguing on two occasions. The board concluded that this testimony provided independent corroboration of the respondent's position.

Other evidence revealed that Mrs. Carter had not been dismissed outright, but had been offered alternative employment at the same rate of pay in the kitchen, and had declined to accept it.

Accordingly, the board did not find that Mrs. Carter had been discriminated against in employment because of her age, and the complaint was dismissed.

However, Professor Hunter observed that the employer should have informed Mrs. Carter of his concern about her work performance, and given her an opportunity to explain before dismissing her.

The Right House Ltd. (Hamilton) and Kingsley Bailey

Mr. Bailey filed a complaint against Right House Ltd. alleging refusal to continue to employ, dismissal from employment and discrimination with respect to terms and conditions of employment because of race and colour contrary to sections 4(1)(b) and 4(1)(g) of the *Ontario Human Rights Code*.

In his complaint, Mr. Bailey, who is black, alleged that in the fall of 1976 he was hired by the respondent, The Right House, a Hamilton department store, as a sales clerk. From the evidence gathered during investigation, it appears the incident that precipitated the complaint occurred when Mr. Bailey was called to the front office and was confronted by a manager, a store detective, two police officers and an acquaintance of Mr. Bailey, a Mr. Wilson, also black, but who was not an employee of The Right House.

Mr. Bailey was advised of a theft of neckties from the store by Mr. Wilson. Mr. Bailey was warned that the subject would be discussed further when his immediate supervisor returned the following week. He received notice of termination the next week for failure to protect store merchandise at the time of the theft. Mr. Bailey denied involvement in the theft or that his actions in any way facilitated it.

During the course of the investigation, the commission learned that Mr. Bailey got on well with most of his fellow employees and performed his job competently. Evidence was presented that Mr. Bailey was the only black person on staff, except for a Mrs. Best, who worked for The Right House for only a few weeks.

Counsel for the commission explained his position: The Ontario Human Rights Code requires that conditions of employment must be the same for persons of all races and colours and that criteria for dismissal of employees must be applied equally to persons of all races and colours. He argued that three previous employees were dismissed because of theft or involvement in theft from The Right House, while Mr. Bailey was dismissed only for failure to protect merchandise. Accordingly, he submitted, Mr. Bailey was the subject of disparate treatment and that disparate treatment was discriminatory.

Since a satisfactory settlement could not be reached in conciliation, the commission recommended to the Minister of Labour that a board of inquiry be called in accordance with the provisions of the Code. The board was chaired by Professor M.R. Gorsky of the Faculty of Law, University of Western Ontario at London. The board convened in Hamilton on March 15, 1980.

To the company, failure to protect its merchandise, while not amounting to theft, was related to theft. Mr. Bailey, they reasoned, should not have left the counter where Mr. Wilson was located when no pressing duty required it. Such action was perceived as blameworthy.

Counsel for the commission relied on the fact that the company security officer requested another employee to keep Mr. Bailey under surveillance (and he was the only person regarding whom such a request was made). Counsel emphasized that while these acts did not amount to a situation where a finding of overt discrimination could be made on the basis of race or colour, or intention on the part of the employer to discriminate, it did represent an evidentiary basis for a finding of disparate treatment amounting to a breach of sections 4(1)(b) and 4(1)(g) of the Code.

The board of inquiry's review of the evidence indicated satisfaction that the security officer followed a uniform pattern of surveillance and that this pattern did not vary when directed at white or black employees. There was no question that she had kept Mr. Bailey under surveillance for some time and that, based on these observations, she had arrived at certain conclusions negative to Mr. Bailey. There was evidence to indicate that the security officer had many other employees under surveillance and had similar suspicions. Evidence did not indicate that security staff surveillance of black employees had been fed by prejudice.

In the board's opinion, Mr. Bailey's being under suspicion with respect to a number of incidents did not amount to a breach of sections 4(1)(b) and 4(1)(g) of the Code. The only evidence of discrimination relied on by counsel for the commission, the board decided, was circumstantial in nature. The fact that there had been very few black employees in the store and that Mr. Bailey was the only one, was, in this instance, insufficient evidence of discrimination against blacks.

The board found no significant difference in the way the respondent treated all of its employees who were subject to surveillance and in the way it acted in response to conclusions derived from such observations. Thus, the board concluded there has been no breach by the respondent of section 4(1)(b) and section 4(1)(g) of the *Ontario Human Rights Code* as alleged by the complainant. The case was dismissed.

Dominion Management Ltd. and Dilip Waghray/Girja Waghray

A Burlington couple, Mr. and Mrs. Waghray, filed complaints with the commission alleging that they had been informed by an apartment superintendent that there were no vacancies, in spite of the fact that a one-bedroom apartment had been advertised in the newspaper for several days, both before, and after, their efforts to view the accommodation. Their complaints alleged denial of housing accommodation on the grounds of their race, colour, nationality, ancestry and place of origin. The Waghrays are landed immigrants from India.

The inability of the commission to achieve a satisfactory settlement during conciliation, measured in light of the weight of the evidence supporting the allegations, prompted the commission to recommend to the minister the appointment of a board of inquiry in accordance with the provisions of the Code.

Before the hearing date, the parties informed the board chairman, Professor Robert W. Kerr of the Faculty of Law, University of Windsor, that an agreement had been reached. On February 27, 1980, Professor Kerr made the following order:

- It was ordered that the respondent (Dominion Management) pay, in the name of the complainants, Girja and Dilip Waghray, the sum of \$200.00 to Dr. Rygiel's Children's Home.
- It was also ordered that the respondents post the *Ontario Human Rights Code* card in a public place, in each building they operate, as part of their business.

Dated February 27, 1980.

**Associated Toronto Taxi-Cab Cooperative Ltd. (Co-Ops)
and
Khalsa**

Mr. Khalsa, who is a Sikh, filed a complaint with the commission after he had applied for a taxi driver's position with Co-Ops and was told it was company policy not to hire men with long hair and beards. He alleged discrimination in employment because of his creed in contravention of section 4(1)(a) of the Code, as the Sikh religion forbids its members to cut their hair and beards.

A satisfactory settlement could not be reached in conciliation, and the commission recommended to the minister that a board of inquiry be appointed in accordance with the provisions of the Code. Professor E.J. Ratushny of the Faculty of Law, University of Ottawa, acted as chairman. The board convened in Toronto on May 8, 1980.

The respondents admitted Mr. Khalsa could not be considered for employment because of long standing company policy established to provide good public relations. The company indicated no intent to exclude applicants on the basis of creed.

In conciliation, the respondent had been willing to prominently display a notice of the company's intention to abide by the Code and to send a letter of apology to the complainant — a draft of which was filed with the board.

The respondent also invited another application from the complainant; however, he no longer expressed interest in the job.

Mr. Khalsa did not object to the terms of settlement, but to the basis upon which the grounds of discrimination had been defined. He asked the board to decide that the term 'creed' is broad enough to encompass any conscientious belief that a person's hair should not be cut. This would apply even in instances where this belief was not based on a specific religious tenet.

The board concluded that it would be inappropriate to hear representations on this issue in this case since to do so would go beyond the mandate granted by the board's appointment with reference to the provisions of the Code.

Ultimately the board ruled that the respondent had contavened the *Ontario Human Rights Code*, and ordered that:

- the respondent display in a conspicuous place the *Ontario Human Rights Code*; and send a letter of explanation and apology to the complainant and to the commission.

**Diamond Restaurant and Tavern
and
Cinkus**

Ms. Cinkus, of Toronto, filed a complaint with the commission against Diamond Restaurant and Tavern alleging that she had been refused employment as a chef because of her sex in contravention of section 4(1)(a) and (b) of the Code.

The commission's investigation revealed that Ms. Cinkus, an experienced chef, had answered a newspaper advertisement for a chef and that upon enquiring, an unidentified female told her that it was not a job for a woman.

Ms. Cinkus later visited a Canada Employment Centre and an employment counsellor told her about an opening at Diamond Restaurant and

Tavern. Ms. Cinkus related her previous rejection, but was encouraged to re-apply.

When Ms. Cinkus returned to the restaurant, she showed the Canada Manpower referral notice to the owner who said the job was not for a woman, but for a man.

The commission entered into conciliation with both parties, but no satisfactory settlement could be attained. The commission then recommended to the minister that a board of inquiry be appointed in accordance with the provisions of the Code. The board was chaired by Professor Ian A. Hunter of the University of Western Ontario Law School.

Evidence presented at the board showed that Ms. Cinkus had received more than a dozen years of food preparation training in Europe and another 15 years of experience in Canada as either chef or cook. Her work record was, by all appearances, consistently good.

A Canada Employment Centre job counsellor corroborated Ms. Cinkus's allegations against Diamond, indicating that he had telephoned the restaurant the day following Ms. Cinkus's personal application for employment. He inquired about the reason for Ms. Cinkus's failure to secure a position as chef. No satisfactory reply was forthcoming, and the restaurant was told Manpower could no longer list the job if women were not allowed to apply. The job order was cancelled.

The restaurant told the board that it was all a 'misunderstanding' caused, in part, by the restaurant owner's limited command of English. This argument was rejected by the board in light of evidence to the contrary.

Additional evidence was introduced that the restaurant had invited the investigating human rights officer to view the restaurant premises and to lift a large soup tureen which a chef would have to lift from the floor to the stove, a task the officer conceded was arduous.

Under section 4(6) of the Code, an exemption can be granted where sex is a *bona fide* occupational qualification and requirement for the position.

The board considered the respondent's evidence as it applied to section 4(6) and rejected it because the respondents had not allowed Ms. Cinkus to test her ability to lift the tureen. Thus there was no basis for the employer's defence.

In giving evidence, the respondent gave another reason why Ms. Cinkus was not given employment, saying that another (male) chef had already been taken on. On examining payroll records, the board concluded that the male chef had not been hired until several weeks *after* Ms. Cinkus's rejection.

The board then found in Ms. Cinkus' favour, declaring that Diamond Restaurant and Tavern, acting through its owner and servants, had discriminated against her because of her sex in contravention of section 4 of the Code.

The board ruled:

- that the respondent be required to write a letter to the commission indicating its intention to comply fully with the Code in future;
- that the respondent be required to post Human Rights Code cards on the premises;
- that the restaurant be required to notify the commission of all employment vacancies at the restaurant, prior to public advertisement, for a period of one year;
- that the respondent pay the complainant \$1,350.00 as compensation for wages lost and injury to dignity, reputation and feelings as a result of the discriminatory act; and
- that the respondent notify the chairman or the commission in writing when it has complied with the board's order of payment to the complainant.

**Flaming Steer Steak House Tavern Inc.
(Niagara Falls)
and
Bell, Korczak**

Ms. Korczak and Ms. Bell filed complaints with the commission alleging dismissal from their employment as waitresses because of their refusal to accept the sexual advances of their employer in contravention of sections 4(1)(b) and 4(1)(g) of the Code.

There were several incidents about which Ms. Bell complained, involving remarks of a sexual nature made to her by the owner of the Niagara Falls restaurant. Ms. Korczak testified that the owner slapped her rear and made advances on more than one occasion, and that this contact was unsolicited. She claimed he had also made suggestive inquiries about her personal life.

Conciliation attempts were unsuccessful and the commission recommended to the minister that a board of inquiry be appointed in accordance with the provisions of the Code. The board convened under the chairmanship of Mr. O.B. Shime, Q.C., a mediator with Dispute Services of Toronto.

The hearing marked the first time for a board of inquiry to test the application of section 4(1)(g) to allegations of sexual harassment. This section provides that 'No person shall discriminate against any employee with regard to any term or condition of employment because of . . . sex . . . of such employee.'

The decision of the board defined, at the outset, general principles surrounding the issue of whether or not sexual harassment is covered by the Code.

The board concluded that the purpose of the Code was to establish uniform working conditions for employees, as well as to protect workers from negative psychological and mental effects and gender-directed conduct emanating from a management hierarchy as a condition of employment.

Addressing itself to a definition of sexual harassment, the board stated at length that a person who is disadvantaged because of sex is being discriminated against in employment when denied financial reward or when some form of sexual compliance is exacted to improve or maintain existing benefits. Where equal access is denied or when terms or conditions differ, the woman is being discriminated against.

In the opinion of the board, forms of conduct prohibited under the Code include coerced sexual intercourse, unsolicited physical contact, persistent propositions and gender-based taunts and insults.

However, the board declared that persistent and frequent conduct is not the only condition for an adverse finding under the Code.

A sole incident or intermittent and sporadic incidents of an employee being denied equality of employment because of sex is prohibited activity.

However, the board cautioned that the Code should not be seen as an inhibitor of normal social contact between employees or between management and employees. The danger is coerced or compelled social contact where refusal may result in a worker's loss of employment benefits.

When such overtures become a condition of employment, they may be considered to be discriminatory.

Similarly, the Code should not be construed as inhibiting free speech. It is only when the language or words form a condition of employment that the Code provides a remedy. As in the case of the frequent and persistent taunting (of an employee) by the supervisor because of colour—which is discriminatory under the Code—the persistent taunting of an employee by a supervisor because of sex, is discriminatory activity under the Code.

The next issue to be decided was one of corporate liability, or the extent of responsibility of a company for the actions of its employees in such cases.

The board stated that the law is quite clear that companies are liable where members of management, no matter what their rank, engage in other forms of discriminatory activity. The board cited lower ranking members of a management team who were held liable in anti-union activity or discrimination against employees because of race or colour, and concluded that the same general law, which imposes liability in those cases, ought to apply where members of a management team discriminate because of sex.

The issue of similar or related fact evidence was also dealt with by the board. During the hearing, evidence was submitted on behalf of the com-

plainants to demonstrate a pattern of conduct by the respondent which involved other female employees.

The board cited the danger of admitting this type of evidence in that the accused might be convicted not on the basis of the evidence under which he was charged, but on the basis of other acts which indicate the accused's disposition to commit these acts.

However, since most sexual situations do not occur in public, there is a danger that a judgement of guilt or innocence depends solely on the word of the accuser and accused. In such circumstances, it is equally unjust to deny a remedy to an injured party as to grant a remedy against an innocent one.

In giving testimony, both Ms. Bell and Ms. Korczak reported accounts of innuendo and sexual advances by their former employer.

The respondent, in turn, took issue with their testimony, stating that their termination was due solely to sub-standard performance. A considerable body of evidence was brought forward to indicate that the dismissal of the two women was based on diminished competence.

The board decided the evidence supporting the complainants was flawed by lack of credibility and suggested improper motives of both women, implying that they were in financial arrears since their dismissal and hoped to realize a sizeable cash settlement.

Deciding that the evidence of the women could neither corroborate nor establish a pattern of conduct indicating discriminatory practices in violation of the Code, the board dismissed the complaints.

Jolyn Jewellery Ltd. and Skeete, Samuel

Complaints from Mr. Skeete and Mrs. Samuel, two black employees dismissed by Jolyn Jewellery Ltd. of Toronto, alleged discrimination in employment because of their race, colour or place of origin in contravention of section 4(1)(b) of the Code.

Both complainants also alleged that a white comptroller had subjected them to unfair working conditions in violation of section 4(1)(g).

Mr. Skeete had been employed at the company as supervisor of computer operations for two years, and the commission's investigation revealed no problems with his work performance. He hired Mrs. Samuel as a key punch operator several months after beginning his employment, and she was considered to be an experienced and reliable employee.

The investigation revealed that during the first year of their employment, the company was experiencing very rapid expansion. Mr. Skeete received a bonus of \$1,000 in his first year with Jolyn, but problems later developed in the computer system and the comptroller accused him of an error, which resulted in an overpayment of taxes. Mr. Skeete denied this charge and his employers cleared him of it. However, he was relieved of his supervisory duties and subsequently dismissed.

After Mr. Skeete's release, the duties of computer operator were taken over by a woman who, Mrs. Samuel claimed, was unable to properly manage the machines. This created an increasingly difficult situation for Mrs. Samuel, coupled with the discovery that the new computer operator—whose job Mrs. Samuel alleged she had to take on along with her own—was receiving a higher salary than she was.

Suddenly, critical input and control cards under Mrs. Samuel's custody disappeared. A series of confrontations occurred between Mrs. Samuel and management and Mrs. Samuel was dismissed.

Because settlement could not be reached in conciliation, the commission recommended to the minister that a board of inquiry be appointed in accordance with the provisions of the Code. Chosen to chair the board was Professor D. A. Soberman, Dean of the Faculty of Law of Queen's University, in Kingston, Ontario. The board convened in Toronto on September 18, 1979.

The complainants both testified during the hearing that a pivotal element in their difficulties at Jolyn was the comptroller, whom they accused of prejudice against blacks. The comptroller denied the

allegations, but testimony of at least three black employees at Jolyn led the board to conclude the comptroller may have made some utterances about blacks during a stressful period. Though this was a serious incident, the board did not consider it in itself causal to the dismissal of the complainants.

In assessing the evidence introduced by the complainants, the board concluded that a personal conflict existed between Mr. Skeete and the company comptroller—and that neither was blameless. The board indicated it could not rule that the comptroller was in contravention of section 4(1)(g) of the Code because of an apparently unrepeatable outburst.

Nor could it, in examining reasons of proximate cause for Mr. Skeete's dismissal, come to a judgement that there was a violation of section 4(1)(b). Rather, the dismissal was due to strained relations unrelated to race. It followed that Mr. Skeete could very well have been dismissed had he been white.

In the case of Mrs. Samuel, a similar lack of patterned evidence revealed no evidence of discriminatory conduct. Mrs. Samuel's dismissal was occasioned by incidents which, were she white, would probably have ended in the same results. Accordingly, the board did not find that Jolyn had violated section 4(1)(b) and (g) of the Code when it terminated Mrs. Samuel's employment.

The cases were dismissed.

Ministry of Government Services and Malik

Mr. Malik's complaint was filed after he was unsuccessful in a competition for a higher grade job of 'Clerk Supply 2' within the Ministry of Government Services. Mr. Malik questioned the interview process used for selection and alleged discrimination in employment because of his race, colour, ancestry or place of origin in violation of section 4(1)(b)(c) and (g) of the Code.

Mr. Malik is of Pakistani origin. He secured the equivalent of an Ontario grade 12 education in Pakistan.

Mr. Malik began with the Ministry of Government Services in September 1974. He worked as a short-term supply clerk, picking out, packing and shipping orders in the warehouse of the Ontario Government Bookstore. He learned of the availability of the 'Clerk Supply 2' positions by means of a memo circulated in the warehouse. Twelve co-workers also applied for the nine positions.

The commission's investigation revealed that the three-person review board who interviewed the applicants told them that questions were conventional and job-related. Interviews—conducted informally but privately in the warehouse cafeteria—were followed by the consensus rating of each candidate based on their answers to questions and standards set by the Skilled Trades Rating Manual.

Mr. Malik claimed that he had failed to secure a position, despite longer in-house experience and the fact that he had introduced many of the successful candidates to the requirements of the job. A letter from a member of the recruitment panel explained why he was not successful:

The reason you were not selected was that since all applicants including yourself had on-the-job experience the competition was close . . . and you were edged out because you had no strong points in your favour and did not present yourself as well for the interview. Also, lateness, extended lunches and coffee breaks were a detrimental factor.

Mr. Malik's score on an overall basis was 11th, the top nine scorers being awarded jobs. Soon after, his contract expired and he was dismissed.

Conciliation failed to resolve the complaint and the commission recommended to the Minister of Labour the appointment of a board of inquiry in accordance with the provisions of the Code. Named to chair the board was Professor Mary Eberts of the Faculty of Law, University of Toronto Law School. Both the hearings and the alleged discrimination took place in Toronto, and the board convened there on October 31, 1979.

The case was presented to the board by counsel for the complainant and commission as discrimination occurring through the interview and screening process. It was argued that reliance on an interview as the sole method of allocating the jobs in question constituted indirect discrimination against the complainant. The commission conceded that the interview may have been neutral on its face and essentially the same for all candidates, but that because of the unique circumstances of Mr. Malik's background and ethnicity, the interview procedure militated against his successful candidacy.

Counsel also contended that the focus on four areas of Mr. Malik's low scores (expression, initiative, reliability and personal characteristics) did not take into consideration cultural behaviour patterns. Counsel requested a comparison of the scores of Mr. Malik and the successful ninth ranking candidate. If the four elements mentioned had been omitted, Mr. Malik would have scored higher. In three of the four categories the ninth ranking candidate rated better than Mr. Malik.

To establish its case, the commission relied on the evidence of Dr. Frances Henry, Professor of Anthropology at York University in Toronto. She had completed numerous studies of black and East Asian communities in Canada.

Dr. Henry asserted that Mr. Malik's background is conducive to a very deferential, non-assertive, low keyed approach. The assessment procedure would make him feel inferior and subordinate and he would react accordingly. In a work environment, she contended, a person of Mr. Malik's cultural background would believe that being non-assertive and doing his job with a deliberate but unobtrusive regularity, would thus demonstrate loyalty to his superiors. In exchange for that loyalty he would expect fair and considerate treatment.

However, Henry's testimony also applied to two other candidates, who were of East Indian descent. One was a Hindu raised and educated in Kenya with a very high degree of education (Masters level). The other was a Christian raised in Georgetown, Guyana, who had attained a grade

level similar to Mr. Malik. Both were successful candidates for openings in the department. And the success of the two candidates raised questions about Mr. Malik's low performance and to what extent it was attributable to his cultural background.

Dr. Henry informed the board that while an East Indian's reaction to an interview might vary depending on the degree of modernization or Westernization in his or her upbringing, 'stratification . . . and what it involves for the individual, is so strong that in this kind of culture/personality interaction, I would give an awful lot of weight to the cultural aspects.'

Dr. Henry admitted under cross examination that there was no weight of statistical evidence to support this argument. Nor were there studies to indicate the abilities of members of various East Indian cultures to interact effectively in Euro-American Society.

In a case of indirect discrimination, the starting point is a requirement for employment that appears to be neutral, such as skill or an intelligence test, but which can have a disproportionately negative impact on members of a particular group. However, the onus rests with the commission to show that the requirement in question has such impact, with the burden of proof shifting to the employer to show that the use of the 'offending' test or criteria is a business necessity.

Should this be done successfully, the employer must still show that other selection criteria, without similar discriminatory effect, would also serve the employer's legitimate business interests.

Legitimate business interests is still not a sufficient defense if disproportionate impact is fully established. The employer would then have to prove that the impugned device is not only invaluable in the selection process, but that it is the *only* way to select the employees in question.

In some cases, the board reasoned, the offending requirement itself will permit a presumption of disproportionate impact to be made. In this category, one could cite the requirement of a cap or headgear, or a clean-shaven appearance, which

would exclude Orthodox Sikhs from employment. Mr. Malik's case is not, however, one where this sort of assumption can be made.

The board doubted that Dr. Henry's evidence, even in conjunction with the evidence of her colleague, Professor Paul Stager, an industrial psychologist, established the disproportionate impact of the interview on persons of Mr. Malik's origin and culture.

The board could not conclude that the interview method selects applicants for hire in a significantly discriminatory pattern.

In summary, the board ruled that evidence of discrimination had not been established. The generality of the expert testimony, the problems of defining the group, and the experience of the other three applicants, also of East Asian origin, all militated against ruling in favour of the commission and the complainant.

Yet the board was not convinced that the respondent ministry had proven its case of the absolute necessity of the interview in the selection process. Nor had it been shown that there was no more efficient method to achieve the same object.

Here, the board cited the criticisms levelled at the interview system by Professor Stager, who argued that considerably more weight should be given to practical experience. He also pointed out that interviewers were required to award a precise number of points within an extremely rigid system, i.e. 48 or 38 points, and therefore could not evaluate an intermediate factor as being more representative of the candidate's performance. That was because allowable numbers of marks were fixed by the Skilled Trades Rating Manual. Expression, for example, was given 60 points and education, 48, although facility in oral or written English did not seem to be a particularly important job requirement. Further, Professor Stager stated that it was unwise for the selection panelists to confer after interviewing each candidate. He thought they should have arrived confidentially at their assessments, in order not to be swayed by one another's initial reactions.

The board concluded that had the case been found in favour of the complainant, the board would have found the institution — the ministry — at

fault and not those named in the complaint as its servants. 'The individuals, although they framed the particular questions and made the ultimate decision, were doing so within requirements which did not give them much freedom to influence the outcome. Theirs was not the decision to require the interview as the sole method of evaluation.'

The complaint was dismissed.

Canadian Nurses' Association and Cousens

Since 1971, Mr. Cousens had worked as a senior administrator for the Canadian Nurses' Association in Ottawa. One of his duties involved the delivery of accreditation examinations to the respective provincial registering authorities. In the early 1970s, the examinations were used in English by all provinces of Canada and the Northwest Territories. French translations were used in Ontario and New Brunswick, and the sister association in Quebec developed its own examinations in French.

The Order of Nurses of Quebec later indicated that it would use the national body's testing services, provided the examinations were developed in French and administered by a bilingual staff.

In late 1979, the CNA proceeded on this basis and, at the same time, developed a new organizational structure, eliminating Mr. Cousens's position and establishing a new and upgraded position of administrative manager. Mr. Cousens received a letter from his employer, stating that the candidate for this position must be 'fluently bilingual and preferably Francophone.' Mr. Cousens was not fluently bilingual and he was not a Francophone. He did not apply for the position and his services were terminated.

He then filed a complaint with the commission, alleging discrimination in employment because of ancestry in violation of section 4(1)(b) of the Code.

The commission's investigation established that Mr. Cousens's position had never been classified as bilingual during his employment with the CNA, and that complete fluency in French was not a *bona fide* occupational requirement. More important, evidence revealed that his work performance and administrative skills were far above average.

Since conciliation attempts were unsuccessful, the commission recommended that the minister appoint a board of inquiry in accordance with the provisions of the Code. The board was chaired by Professor E.J. Ratushny, of the Faculty of Law, University of Ottawa Law School, and the hearing convened in Ottawa on December 15, 1980.

Before its assessment of the evidence, the board addressed several legal issues. The chairman relied on two general propositions that had been adopted by previous boards of inquiry: firstly, in order to establish a contravention of the Code, it is not necessary to prove that discrimination was the sole (or even the most significant) factor motivating the alleged discriminatory act. It need only be one factor. Secondly, it is not necessary to demonstrate an intent to discriminate on the part of the respondent, provided a discriminatory result occurs.

A more difficult question, the board stated, was whether or not an explicit preference for a 'Francophone' for the position was barred by provisions of the Code. Because 'language' is not a prohibited ground of discrimination under the statute, it would be necessary to demonstrate that the preference based on language extended to one of the prohibited grounds in order to establish a contravention. The only relevant ground in this case was 'ancestry', which the board defined to mean family descent.

Turning to the meaning of the term 'Francophone', counsel for the commission argued that in the Canadian context and the context of this case, 'Francophone' implied French-Canadian extraction. However, the respondent pointed out that this was not always the case, and the board decided that 'Francophone' means French-speaking in the sense of having French as one's mother tongue.

The key phrase in the letter of termination was 'fluently bilingual and preferably Francophone.' The board construed this to refer to an association between 'mother tongue' and 'ancestry'. Therefore, it decided that 'to give preference in employment to a "Francophone" could constitute a contravention of the Code on the basis of ancestry,' since exclusion based on 'mother tongue' is, effectively, discrimination based on ancestry.

The board then examined the question of whether the complainant's dismissal constituted a contravention of the Code. Evidence on his work performance and language capability was assessed, as were the language requirements of the position.

The board learned that Mr. Cousens's performance evaluations had been extremely favourable during his employment with the CNA. Counsel for the commission argued that the new administrative manager position (which replaced Mr. Cousens's position) did not need to be upgraded to encompass responsibilities which Mr. Cousens was not capable of meeting, and witnesses for the respondent conceded that the stipulated educational qualifications were not really necessary for the new post. The board concluded that the duties of, and requirements for, the position had not in fact changed from those of the one that Mr. Cousens had held.

The board also decided that Mr. Cousens's lack of fluency in French was not a compelling reason for his dismissal, in light of the considerable evidence introduced that it was not necessary to be 'fluently bilingual' in order to carry out his duties. Accordingly, the board concluded that a significant factor in Mr. Cousens's termination was the fact that he was not a Francophone.

Although there was no direct evidence that the CNA sought to dismiss Mr. Cousens in order to replace him with a French-Canadian, the board stated that 'the balance of circumstances leads to the conclusion that the real preference in employment, whether conscious or unconscious, was for a French-Canadian.'

The board observed that the facts did not establish a clear intention to discriminate by the CNA, and that there was no 'patterned evidence of discrimination.' For that reason, the board declined the

complainant's request for a letter of apology from his former employer, and refused the commission's request of a memorandum from the organization outlining to employees their rights and obligations under the Code.

The board did rule that Mr. Cousens was entitled to monetary compensation for earnings lost as a result of discrimination, and awarded him three months salary at his last pay level with the CNA. In addition, he was awarded \$1,100 in compensation for loss of dignity.

Arvin Automotive of Canada Ltd. and Abihsira

Mr. Abihsira alleged that he was subjected to discriminatory terms and conditions of employment and was later dismissed from Arvin Automotive of Canada Ltd. because of his creed. He believed this to be in contravention of section 4(1)(b) and 4(1)(g) of the Code. Mr. Abihsira was born in Morocco and is of the Jewish faith.

Following Mr. Abihsira's dismissal from his employment with Arvin, he filed a grievance under the collective agreement then in force between the union (United Steelworkers of America) and the company. A hearing before an arbitration board resulted in dismissal of the grievance.

Mr. Abihsira then lodged a complaint with the commission, and since conciliation was not successful, the commission recommended that the minister appoint a board of inquiry in accordance with the provisions of the Code. The board convened on October 14, 1980 under the chairmanship of Professor Ian A. Hunter of the University of Western Ontario Law School.

At the hearing, counsel for the respondent indicated a preliminary objection to the jurisdiction of the board, arguing that the union grievance and the complaint under the Code arose out of the same facts and concerned the same incidents. Therefore, he stated the decision of the arbitration board should be final and binding.

The board adjourned to consider the respondent's objection, and later rejected this argument saying, among other things, that the differences between

the parties at the hearing related directly to the interpretation and application of section 4 of the Code, and not to any particular article of the collective agreement.

The board viewed section 14c.-**(b)** of the *Ontario Human Rights Code* as giving remedial powers to a board of inquiry once it has determined that a party has contravened the Act. 'The board . . . may order any party who has contravened this Act to do any act or thing that, in the opinion of the board, constitutes full compliance with such provision and to rectify any injury caused to any person or to make compensation therefor.'

'Once the board of inquiry is satisfied that there are no valid jurisdictional obstacles, there is nothing in the mandatory language of section 14,' the board concluded, 'which would indicate a discretion on the part of the board to decline to hear and decide whether a party had contravened the legislation because of some concern about the employee having a second forum available to him (or her) which is unavailable to the employer.'

The respondent's third ground of objection was that in resolving the dispute, the board would have to examine and interpret the collective agreement in force between the union and Arvin Automotive. However, the employer believed that a board of inquiry lacks the authority to do so, believing this to be the sole prerogative of an arbitration board.

Nevertheless, the board decided that authority existed 'to determine any question of fact or law or both required in reaching a decision as to whether or not any person has contravened the Act,' as provided in section 14b.-**(6)** of the Code.

At the heart of the respondent's preliminary objections to the board's jurisdiction was the concept of *res judicata*: essentially, that a matter once properly decided should remain decided. It was the opinion of the board that this concept simply did not apply in this instance.

Following its interim decision on the respondent's objections, the board reconvened, and was then informed by counsel for the commission that the

parties had reached an agreement to settle the matter. Counsel informed the board of the following terms of settlement:

- The company would write Mr. Abihsira a letter of regret, signed by a senior official.
- The company would post 'a reasonable number' of Ontario Human Rights Code cards at the business premises.
- The company would pay Mr. Abihsira the sum of \$5,000 without an admission of liability.

The board expressed satisfaction that 'the public interests, no less than the private interests of the party, are adequately addressed by this settlement.'

Cara Operations, CN Tower Ltd. (Toronto) and Ofori

The complainant, Mrs. Ofori, filed a complaint with the commission, alleging that she was dismissed from her employment as cashier with the Cara Operations CN Tower Shop, because of her race, colour, nationality, ancestry and place of origin, in contravention of section 4(1)(b) of the Code. Mrs. Ofori is a Canadian citizen of Ghanaian origin.

Mrs. Ofori began her employment with the CN Tower store in 1977. During investigation, the commission learned that there had been no problems with her work performance until the incident that led to her dismissal in July 1979. However, Mrs. Ofori stated that her work relations began to suffer following the appointment of a new store manager in late 1978.

From the evidence gathered, it appeared that Mrs. Ofori believed that the manager disliked her not only because she was black, but particularly because she was a black African.

The respondent countered that Mrs. Ofori was perceived by the manager as proud of her national origin, asserting it in her dealings with her co-workers. In giving testimony, the manager denied any particular dislike of Mrs. Ofori, saying only that her attitude created tensions at times in her relations with other employees.

Mrs. Ofori operated a cash register in the CN Tower store. Each register began the day with a cash float of \$100, with the remaining money in the register at the end of the cashier's shift balanced against total sales.

A supervisor's spot check revealed, one day, that Mrs. Ofori's cash was \$10.53 short. Not long afterwards, another employee reported finding two \$10 bills under a cash register that was found to be the same cash register used earlier by Mrs. Ofori.

The manager then discussed the matter with her immediate supervisor, and their joint decision was to confront Mrs. Ofori with the shortage and if her explanation was unsatisfactory, to dismiss her. Although Mrs. Ofori denied the charge, the company terminated her services.

Shortly afterwards, Mrs. Ofori brought her case to the commission. An investigation followed and attempts made at conciliation were not successful.

The commission therefore recommended to the minister that a board of inquiry be appointed in accordance with the provisions of the Code. Appointed as chairman was Professor F.H. Zemans, of Osgoode Hall Law School, York University.

The board which convened in Toronto on August 12, 1980, heard evidence from the floor supervisor who made the original discovery of the cash shortage.

The board heard additional evidence indicating that it may have been possible for one of several employees to have used the cash docket where the two \$10 bills were found.

There were differing versions of the final meeting of Mrs. Ofori and her two supervisors. The manager's account was that no explanation for either the tally shortage or the two \$10 bills came forward and that Mrs. Ofori took her dismissal calmly.

Mrs. Ofori, however, came away with a recollection of the manager making a negative statement about 'Africans who steal', and leaving the office upset and crying.

Further evidence led by the commission indicated that minor cash discrepancies were not unusual, and that no employees had ever been dismissed because of them. A survey of former employees by the commission's officer had revealed a consensus that 'they had no reason to believe that Mrs. Ofori would steal.'

In its decision, the board found that the facts in evidence did not substantiate the complainant's claim that the manager was racially prejudiced.

On the question of Mrs. Ofori's dismissal, the board found it difficult to understand why it took place under such circumstances: 'It is not in my power to determine whether she was wrongfully dismissed, but I must add that I do feel (management) was rather harsh in their treatment.' The board also stated that if Mrs. Ofori was intent on stealing, there were probably 'many easier opportunities.'

Despite reservations about the legitimacy of the firing, the board found it could not rule in favour of the complainant, and that there had not been a contravention of the Code.

The board concluded that Mrs. Ofori was dismissed because 'particular management personnel believed her lack of explanation confirmed their suspicion that she had attempted to steal \$20 on the evening when there was a fluctuation in her cash amounting to approximately an \$18 shortage.'

It follows, in all likelihood, the board concluded, that she would have been dismissed if she had been a white person in the same circumstances.

Accordingly, the board found that the respondent had not violated section 4(1)(6) of the Code, and the complaint was dismissed.

Activities of the Race Relations Division

The Race Relations Division continued its program delivery to key sectors in Ontario society through its mediation and consultative activities and participation on several committees that were established specifically to improve the race relations climate at both the community and institutional levels.

The division, which saw an enrichment in its staff complement in early 1981, has received greater resources to assist major institutions in Ontario to contribute to the promotion of harmonious race relations through the development of race relations initiatives.

Policing and Race Relations

In fiscal year 1980-1981, the division continued its staff representation on the Metropolitan Toronto Committee on Policing and Race Relations (formerly named the Liaison Group on Law Enforcement and Race Relations), and its four pilot police-minority committees.

In the winter of 1980, the committee obtained additional project funding from the Ministry of the Attorney-General and the Municipal Council of Metropolitan Toronto, which enabled it to hire a project director and two additional staff. These new resources will greatly assist the program delivery of the pilot committees at the neighbourhood level.

Composed of volunteers from the community, local agencies and the police, these pilot committees serve specific communities in Metropolitan Toronto where policy-minority relations have been tenuous and in need of improvement. These committees will be able to embark on more intensified project-oriented activity designed to enhance police-minority dialogue and co-operation.

The division also assists in the resolution of problems that arise in the relations between police and minorities. Following is an example.

In the spring of 1980, tensions between the local Ontario Provincial Police detachment responsible for policing the Wikwemikong Indian Reserve and the band council began to surface. Two issues were generating the tension. One involved the perceptions held by the reserve that certain OPP detachments and staff were insensitive to native

people and the other centred around the lack of power and authority granted to the special native constables who were, in theory, responsible for policing the reserve.

The division was called in by the band council to assist in obtaining a resolution of the two problems. Division staff met with the local district superintendent for the OPP and OPP headquarters officials in order to improve communications between the reserve and the OPP. In addition, the division arranged a series of meetings amongst the band council, the special native constables and the local detachment and district headquarters staff in order to isolate the issues and discuss remedies.

As a result of the division's intervention, various agreements were arrived at. The OPP increased the autonomy and level of responsibility accorded to the special native constables, who were identified as the lead law enforcement body on the reserve. The local OPP detachment agreed to provide any necessary back-up assistance. The special constables were also given the responsibility of acting as court officers and of serving all committal warrants on the reserve.

As part of the OPP's initiatives to increase the awareness and sensitivity of its staff to the issues and concerns of the native people in Northern Ontario, the division participated in a special one week Native Awareness Program, which the OPP organized in consultation with both the native community and OPP staff experienced in native policing. The commission's northern regional staff designed and delivered a half-day seminar using a combination of role play, case study, and audio-visual presentations to provide specific insights into police-native relations issues, and the role of the Race Relations Division regarding the improvement of police-minority relations. In addition to division participation in this special pilot course, it continued to participate in the four-session OPP Junior Command Course offered annually to constables seeking promotion.

In the area of police training generally, the division continued to expand upon its police training initiatives. In 1980, a police in-service training program in race relations was begun with the Peel Regional Police, and in early 1981, a similar program was

initiated with the Halton Regional Police. Division staff continued to participate in the Junior Command Course offered by the Ontario Police College in Aylmer.

Educational Institutions

Staff of the Race Relations Division continued to play an active role in the Race Relations Committee of the Toronto Board of Education. This committee, which was established in 1979 to monitor the implementation of the more than 100 recommendations contained within the board's Race Relations Report, has overseen the numerous curriculum changes the board has been making to remove bias and stereotyping from learning materials. It has also screened many teaching aids, which the board's staff have produced to improve the race relations climate. These include films that explore the experiences of visible minority individuals, with a particular focus on some of the difficulties they face as students and young adults resulting from their encounters with racism.

The last fiscal year also saw the board, assisted by the Race Relations Committee, conducting a race relations student leadership camp for its own staff and students based on a model initiated jointly by the commission and the Ministry of Education in 1978.

In the area of equal employment opportunity, the committee and the division have been working closely together to prepare a survey design and procedures that will be instrumental in determining whether an under-representation and under-utilization of visible minority staff currently exists in the board's workforce. This issue is of particular interest to the committee because of the obvious need for adequate role models in the field of education for both visible minority and other students to look up to and emulate.

The division also undertakes mediation activities when conflicts develop between racial, ethnic and religious groups in the school setting.

When open hostility began to break out between Jewish and non-Jewish students in a large high school in the Hamilton area, for example, division staff were called in by concerned parents to intervene. Division staff held numerous consultations with school staff, parents and the two groups of

students in conflict in order to ascertain the nature and depth of the problem. As a result of the tension, which later escalated from racial name-calling and graffiti to open violence, the school board initiated a series of projects across the board school system that included (1) a one-day staff workshop on multiculturalism and another day on prejudice, (2) the system-wide introduction of a resource book on Slurs, Stereotypes and Prejudice, which assists teachers on how to deal with racial incidents, (3) the inclusion of curriculum materials on race relations, and (4) the establishment of a special sensitization workshop in race relations for the teaching staff of the school where the incident occurred.

Meeting Community Needs

1980-1981 also saw the Commissioner for Race Relations, Dr. Bhausaheb Ubale, convening a series of meetings with the mayors of the various municipalities in Metropolitan Toronto and in the province in order to encourage them to take an active role in promoting a healthy race relations climate in their respective communities. This effort was part of the commissioner's overall strategy of encouraging the development of leadership in the race relations field in all sectors of Ontario society. Clearly, the solution to the elimination of racism in Ontario rests, not within the Race Relations Division alone, but with Ontario society as a whole.

The division continued to work closely with the North York Mayor's Committee on Community, Race and Ethnic Relations, which the commission helped to establish in 1979. In 1980, North York City Council supported the activities of the committee by allocating to it sufficient resources for the hiring of an executive secretary. This committee, which comprises representatives from the police, educational institutions, religious institutions, city council and social service agencies, was in need of a full-time staff person to assist in carrying out its mandate to improve the race relations climate in the city of North York.

The committee has also struck several sub-committees to work on various race relations issues in areas such as parks and recreation facilities and municipal government equal opportunity practices.

The division assisted in other new community-based initiatives designed to improve the race relations climate in strategic neighbourhoods in Metropolitan Toronto. One focused upon the legal needs of the residents of the Jane-Finch area and surrounding community in the city of North York. Division staff participated on a committee that was instrumental in establishing a legal aid clinic with a unique race relations component being an integral part of its service delivery to the community.

Division staff were also members of a committee established by Metropolitan Toronto Council to oversee the administration of a \$100,000 grant to assist in the formation of neighbourhood-based community group-local agency coalitions to develop programs to improve the youth unemployment problem in key neighbourhoods in Metro Toronto. A particular concern is the negative impact of youth unemployment upon visible minority youth in particular. As a result of efforts by the committee through its two staff consultants, several coalitions composed of government representatives, main-stream and minority group agencies, community leaders and local residents were formed to carry forth the program.

In addition, division staff in the Region of Peel were active in assisting the Peel Region Social Planning Council to form a Fair Employment Practices Committee. The committee was able to conduct research into the multi-racial and multicultural nature of the workplace in the Region of Peel and to examine the extent of responsiveness to race relations issues in the workplace. The findings provided the base for producing an employer's guide to assist in heightening awareness of human rights and race relations problems in order to reduce racial and ethnic tensions and to prevent them arising. This was then followed by a successful conference that brought together representatives of business and industry, labour and the community to discuss human rights issues of mutual concern.

In Sarnia, a group of concerned citizens representing a variety of racial backgrounds and interests came together in their common concern regarding the race relations and human rights climate in Sarnia and district. The group, which eventually formed into the Sarnia and Lambton District Human Rights Committee, sought the assistance of division staff regarding ways and means to

heighten community awareness in the field of human rights. As a result of a series of consultations, it was decided to approach the mayor to officially declare a Human Rights Week to coincide with the anniversary of the United Nations Declaration of Human Rights. The mayor agreed to declare the week of December 3 through 10, 1980, as Human Rights Week and the committee, in turn, planned a series of seminars on the topic of human rights that attracted significant public interest and attention.

Other community relations activities seek to prevent incidents of racial assault and vandalism.

When members of the Sikh faith began to experience incidents of racial harassment in Brantford, for example, division staff were instrumental in forming a committee composed of South Asian representatives, the police and concerned citizens to assist in alleviating the harassment and reducing the alienation minority groups feel when no support is offered from the community-at-large in response to racial incidents. The police promised quick and immediate response and this contributed greatly to the lessening of anxiety felt on the part of some South Asian community members. In the meantime, long-term strategies were generated by the committee members and included the convening of an East Indian Friendship Week officially opened by the mayor and the production of an audio-visual display on Sikh life in Brantford, which has been used as an educational tool in schools to increase understanding among group members. As a result of these efforts, a dramatic drop in the number of reported racial incidents has occurred and the race relations climate has generally been seen to have significantly improved.

In co-operation with the Consultative Committee of Religious Leaders Concerned about Race Relations, which the division was instrumental in forming, two successful joint initiatives were undertaken to foster inter-group understanding at the community level. The first, which involved the hosting of an interfaith service in the St. James-town community of the city of Toronto, brought together representatives of various faiths and racial and ethnic backgrounds to celebrate the humanity common in each and every one. The second event, which took place in the same community, involved the hosting of a neighbourhood fair in a local school. The unifying theme of the fair was

the promotion of harmonious race relations. The fair, which included display booths, multi-cultural and multi-racial entertainment, and foods from various cultural backgrounds, was able to attract a broad cross-section of the multi-racial community that comprises the St. Jamestown neighbourhood, bringing together neighbours of various faiths, races and ethnic backgrounds, who might otherwise not have the opportunity to come into contact with each other, in an atmosphere of mutual understanding.

Finally, the consultative committee in conjunction with the division prepared a series of articles and documents for distribution to church leaders throughout Ontario. The documents explained the position that had been taken by the division regarding the Ku Klux Klan and encouraged church leaders to join the fight against the nefarious form of racism that the Klan promotes.

Extremist Groups

In response to the growing public concern expressed in 1980 regarding the increase in Ku Klux Klan activity in Ontario, Dr. Ubale publicly condemned the organization and its racist ideology.

The division's strategies include the mobilization of community resources to assist in combatting the activities of extremist groups. When the KKK attempted to recruit high school students on, or near, school property, the commissioner and staff convened a meeting of directors of the boards of education in Metropolitan Toronto and the Region of Peel, representatives of the Metropolitan Police Force, Ministry of the Attorney-General, Ministry of Education and the Race Relations Division. This meeting was called to devise strategies to thwart the efforts of the Klan and to foster a healthy race relations climate in the school community.

When a member of the KKK was invited to address a high school class in the city, the North York Mayor's Committee on Community, Race and Ethnic Relations was quick to react. In addition to expressing its deep concern, the committee, in co-operation with other community groups

and the commission, is developing policy and program initiatives that are designed not only to prevent a repetition of the Ku Klux Klan incident, but also to enhance the overall race relations climate in the North York school system. The North York Board of Education has provided valuable assistance on this project.

In addition, the commission and staff of the Race Relations Division met with the CRTC to discuss problems that can develop if extremist groups are accorded uncritical access to the media.

Youth Employment Strategies

Growing concern regarding youth employment generally, and its particular impact upon visible minority youth, led the commissioner for race relations to call a meeting with key employers of youth such as the Canadian National Exhibition and Canada's Wonderland to impress on them the mutual benefits of recruiting and hiring disadvantaged young people.

In addition, Dr. Ubale convened meetings with the Ontario Manpower Commission and the Ontario Youth Secretariat in order to encourage them to include race relations components in any youth employment strategy and program developments that the Government of Ontario, through those respective agencies, initiates.

In co-operation with the Consultative Committee of Religious Leaders Concerned about Race Relations, the race relations commissioner was actively involved in the development of a pilot Experience '81 summer youth employment program. This was designed to assist inner-city youth, aged 16 to 21, who reside in a multi-racial community to obtain the necessary job skills for future long-term employment through summer job placements with various employers in both the private and public sectors.

Race Relations and the Workplace

During the fiscal year, the division assisted the City of Toronto to examine, through an employment survey, whether visible minorities and the physically handicapped are under-represented in the city's work force. The survey, which was de-

signed with the assistance of the division, and is the first step in ascertaining what equal employment opportunities strategies might be adopted by the City should the survey indicate that remedial measures in the area of equal employment opportunity are called for.

The division's staff mediate disputes occurring in the workplace and seek to prevent and resolve incidents involving racial harassment.

When racial conflict occurred between co-workers in a warehouse plant near Toronto, for example, division staff were invited by the company to assess the situation with a view to recommending a specific course of action to reduce existing tensions. After studying the situation, division staff prepared a report for the company. Its recommendations were followed by the company, which changed specific personnel practices that had contributed to the tension, and introduced a human relations training course for its supervisory staff. The employer also developed a corrective policy to address racial incidents in the workplace. All staff were apprised of the company's policy not to tolerate racial harassment, and were informed of the steps the company would take should such incidents occur in future.

Cabinet Committee on Race Relations

At the Government of Ontario level, the commissioner for race relations worked closely with the Staff Working Group to the Cabinet Committee on Race Relations in order to examine issues related to equal employment opportunities for visible minorities in the public service, visible minority representation in government advertising and publications, the development of a Government of Ontario race relations policy and the establishment of youth employment programs, with special attention to visible minority youth.

Research

Because race related problems and issues are international in scope, the division collects, on an ongoing basis, data regarding race related policy initiatives and their administration from around

the world. To this end, Dr. Ubale visited the Commission for Racial Equality and numerous agencies, institutions and community associations actively engaged in combatting racism in Britain.

During 1980-1981, Dr. Ubale established an inventory of resource material on race relations policy and program development in various jurisdictions in Canada and abroad. The inventory also contains information about current research in the area of inter-group relations and conflict. This resource will be invaluable in the division's analysis of race-related problems and issues, and will be used as a basis for future race relations initiatives in Ontario.

Statistics

Table 1:

Disposition of Closed Formal Cases:

Disposition	1979-1980		1980-1981	
	Number	Per Cent	Number	Per Cent
Settled	385	73	459	51
Dismissed	81	15	337	38
Withdrawn	63	12	97	11
Total	529	100	893	100
Informal cases completed	385		350	

Table 2(a)

Settlements Obtained in Formal Complaints: 1980-81

Settlement Category	Employment	Housing	Public Accommodation Services and Facilities		Other	Total
			\$3,000 for 2 complainants	\$8,288 for 5 complainants		
Compensation	\$176,400 for 111 complainants	\$5,109 for 6 complainants				\$192,797 for 124 complainants
Offer of Present or Future Job or Facility	73	17	9	5		104
Affirmative Action	22	—	—	1		23
Consultations and Review or Practices	767	40	45	37		889

Table 2(b)**Settlements Obtained in Formal Complaints: 1979-80**

Settlement Category	Employment	Housing	Public Accommodation Services and Facilities	Other	Total
Compensation	\$90,492 for 56 complainants	\$1,850 for 3 complainants	\$8,807 for 10 complainants	\$1,816 for 2 complainants	\$102,960 for 71 complainants
Offer of Present or Future Job or Facility	66	15	12	5	98
Affirmative Action	13	1	—	—	14
Consultations and Review of Practices	423	40	44	28	535

Table 3**Inquiries, Referrals, Advertising and Application Form Review**

	1980-81	1979-80
Inquiries	19,637	16,430
Referrals	5,318	3,629
Advertising Review	184	428
Application Form Review	515	711
	25,654	21,198

Complaints Registered: 1980-81

Region	No.
Toronto East	256
Toronto West	284
Southwestern	212
Northern	70
Eastern	76
Total	898

Table 4**Formal Cases According to Grounds and Social Areas: 1980-81**

Social Area	Grounds						Total	Percentage
	Race Colour	Nationality Ancestry	Sex Marital Status	Creed	Age	Filed on Behalf of Another Person		
Employment	305	58	281	31	71	1	747	84
Housing	46	2	1	2	—	—	51	6
Public Accommodation Services and Facilities	33	6	9	2	—	1	51	6
Reprisals	10	4	3	—	1	4	22	2
Signs and Notices	—	—	—	—	—	—	—	—
Filed on Behalf of Another Person	9	1	8	1	1	2	22	2
Total	403	71	302	36	73	8	893	
Percentage	45	8	34	4	8	1		100%

Table 5**Formal Cases According to Grounds and Social Areas: 1979-80**

Social Area	Grounds						Total	Percentage
	Race Colour	Nationality Ancestry	Sex Marital Status	Creed	Age	Filed on Behalf of Another Person		
Employment	159	62	163	21	30	—	435	82
Housing	27	1	3	2	—	1	34	6
Public Accommodation Services and Facilities	25	7	7	1	—	—	40	8
Reprisals	4	1	3	—	1	1	10	2
Signs and Notices	—	—	—	—	—	—	—	—
Filed on Behalf of Another Person	4	—	1	2	—	3	10	2
Total	219	71	177	26	31	5	529	
Percentage	41	13	34	5	6	1		100%

Table 6**Boards of Inquiry**

	1980-81	1979-80
Hearings Appointed	57	25
Hearings Completed	15*	14
Findings for Complainant	7	11
Findings for Respondent	7	2
Under Appeal	1	1

*These hearings involved a total of 19 complainants.

Table 7**Race Relations**

	1980-81	1979-80
Mediations	149	137
Major Projects	34	27
Consultations	92	170
Public Education	—	—
Major Projects Activities	38	45
	1,687	1,598

Table 8**Race Relations According to Sector**

Sector	1980-81		1979-80	
	Mediations	Consultations	Mediations	Consultations
Neighbourhood Relations	46	2	44	2
Community Services and Facilities	19	—	14	1
Criminal Justice System	49	4	35	12
Educational Institutions	9	19	14	30
The Workplace	2	4	8	2
Unions	—	1	—	5
Media	12	3	10	1
Health and Social Services	1	3	—	3
Community Organizations	6	36	6	82
Religious Institutions	1	3	—	6
Governments	3	12	5	26
Community at Large	1	5	1	—
Total	149	92	137	170





**THE ONTARIO
AN RIGHTS CODE**

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.....as recognition of the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world and is in accord with the Universal Declaration of Human Rights as proclaimed by the United Nations;

And Whereas it is public policy in Ontario to recognize the dignity and worth of every person and to provide for equal rights and opportunities without discrimination that is contrary to law and having as its aim the creation of a climate of understanding and mutual respect for the dignity and worth of each person so that each person may live in harmony with the community and able to contribute fully as the agent and well-being of the community and the Province;

.....as these principles have been confirmed by a number of enactments of the Legislature and it is desirable to revise and extend the protection of human rights in Ontario;

Her Majesty, by and with the advice and Legislative Assembly of the Province of Ontario, enacts as follows:



Ontario
Human Rights
Commission

Annual Report
1981-82



CANADIAN CHARTER OF RIGHTS AND FREEDOMS

ELIZABETH THE SECOND

By the grace of God of the United Kingdom, Canada and her other realms and territories Queen Head of the Commonwealth, I do enact as follows:

That to whomsoever shall come or from the said day iniquity unknown to me

GREETING:

LET IT BE KNOWN THAT AS

IN THE PAST CERTAIN AMENDMENTS TO THE CONSTITUTION OF CANADA HAVE BEEN MADE THEREBY PARLIAMENT HAS ACCORDED THE GOVERNMENT OF CANADA THE RIGHT TO AMEND ITS CONSTITUTION IN CANADA AS AN INDEPENDENT STATE THAT AMENDMENT IS APPROPRIATE TO THE CONSTITUTION OF CANADA IN ALL RESPECTS.

AND WHEREAS IT IS DESIRABLE TO PROVIDE IN THE CONSTITUTION OF CANADA FOR THE RECOGNITION OF CERTAIN FUNDAMENTAL RIGHTS AND FREEDOMS AND TO MAKE OTHER AMENDMENT TO THE CONSTITUTION OF CANADA;

AND WHEREAS THE PARLIAMENT OF THE UNITED KINGDOM HAS THEREFORE, AT THE REQUEST AND WITH THE CONSENT OF CANADA, ENACTED THE CANADA ACT, WHICH PROVIDES FOR THE PROVISION AND AMENDMENT OF THE CONSTITUTION OF CANADA;

AND WHEREAS THE CANADA ACT, 1982, SET OUT IN SCHEDULE B TO THE CANADA ACT, PROVIDES THAT THE CANADA ACT, 1982, SHALL, SUBJECT TO CERTAIN EXCEPTIONS, COME INTO FORCE ON A DAY TO BE DESIGNATED BY PROCLAMATION ISSUED UNDER THE GREAT SEAL OF CANADA;

KNOW YE THEREFORE THAT WE, BY AND WITH THE ADVICE OF OUR PRIVY COUNCIL, DO BY THESE PRESENTS, APPROVE THE CONSTITUTION ACT, 1982, SHALT SUBJECT TO CERTAIN EXCEPTIONS, COME INTO FORCE ON THE SEVENTEENTH DAY OF APRIL, IN THE YEAR OF OUR LORD ONE THOUSAND NINE HUNDRED AND EIGHTY TWO,

OF ALL WHOMSOEVER LIVING SUBJECT AND ALL OTHERS WHOM THESE PRESENTS MAY CONCERN ARE HEREBY REQUIRED TO TAKE NOTICE AND TO GOVERN THEMSELVES ACCORDINGLY;

TO TESTIFY WHEREOF, WE HAVE CAUSED THESE LETTERS, TO BE MADE PUBLIC, IN THE GREAT SEAL OF CANADA, TO BE HANDED OVER TO THE GOVERNOR GENERAL IN COUNCIL,

AT OUR CITY OF OTTAWA, THIS SEVENTEENTH DAY OF APRIL, IN THE YEAR OF OUR LORD ONE THOUSAND, NINE HUNDRED AND EIGHTY TWO, AND IN THE THIRTY FIFTH YEAR OF OUR REIGN...

BY HER MAJESTY'S COMMAND,

ANNE, PRINCESS ROYALE

REGALIA, GEMMA OF CANADA

PRIME MINISTER OF CANADA

JOHN TURNER, LE PREMIER

ANDREW COOPER, LE REGISTREUR

RONALD D. LEE, LE RECETTEUR

JOHN R. MCNAUL, LE RECETTEUR

20th Anniversary



**Ontario
Human Rights
Commission**

**Annual Report
1981-1982**



Premier's Message

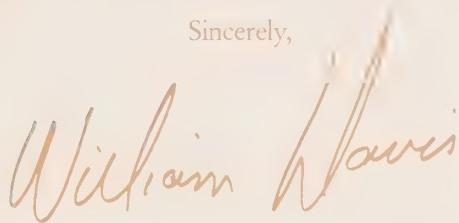
I am pleased to have this opportunity to express my best wishes on the twentieth anniversary of the Ontario Human Rights Code. Human rights and their protection are a critical part of the infrastructure of civility and human decency on which our society depends.

Ontario has always provided significant leadership in the area of human rights legislation and administration. We believe very sincerely in the need to balance effective human rights legislation with common sense and sound judgement in the enhancement of those values which make our community unique, our society stable, and our future so bright.

Justice and fairness amongst the races, in the work place, between the sexes, between those who are handicapped and those who are not, constitute an important contractual link which we all must make not only with each other but with our future.

I sincerely hope that the celebration of twenty years of the Ontario Human Rights Code will not only focus on the successes and challenges which have been effectively met in the past but on the mandate and opportunity which we share for building a brighter more humane and more compassionate future for all who live in this province, and all who may choose to come here.

Sincerely,



William G. Davis



Russell H. Ramsay

Minister's Message

I wish to extend my best wishes regarding the Twentieth Anniversary of the Ontario Human Rights Commission. The special edition of the Annual Report commemorating this event is an important document in reviewing the history and development of human rights in this province.

As Ontario Minister of Labour, I take great pride in being the Minister responsible for the Commission. I have a deep and long standing commitment to human rights, fairness and equality of opportunity. A combination of human rights legislation, public education and community goodwill is necessary to achieve the goal of understanding and mutual respect in society.

The new Human Rights Code with its broadened mandate of protection against discrimination of, for example, the handicapped, will be a major step forward in making Ontario an even better place to live.

Yours sincerely,

A handwritten signature in brown ink that reads "R. H. Ramsay".

Russell H. Ramsay,
Minister



Canon Borden Purcell

Chairman's Remarks

I am happy to present the Fourth Annual Report of the Ontario Human Rights Commission for the fiscal Year 1981-1982. This year we have prepared a special report which highlights June 15, 1982 as the twentieth Anniversary of the Human Rights Code in Ontario. This report looks at the evolution of human rights legislation and the history of the Ontario Human Rights Commission as well as our work during the past year.

The past 20 years have seen great strides made in the field of human rights. Ontario was the first province in Canada to enact a human rights Code, along with a human rights commission to administer it. The new Human Rights Code, which will be proclaimed this year, propels us further into the forefront of the protection of human rights in Canada.

Despite our relatively short history, our Commission has much to be proud of. Many policies and practices regarding human rights in Ontario which we now take for granted, were the result of hard work and the dedication of the community, our staff and commissioners throughout the years. Many of these landmark cases and policy decisions are highlighted in the history sections of this annual report.

On February 19, 1982, I had the honour of being appointed Chairman of the Ontario Human Rights Commission. Having been a member of the Commission for the past four years, coupled with my background in church and in various human rights organizations, I look forward to continuing the fight for equality of opportunity in my new role as head of this Commission. I intend to give our Commission a more extensive public profile by way of participating in speaking engagements and seminars at major meetings and conferences throughout Ontario.

We face tremendous challenges in the 1980s in light of rapid technological change, a more complex society, economic difficulties and constraints, and a greater demand for rights. Our Commission must work harder than ever to educate the public regarding human rights, promote a climate of understanding and mutual respect and enforce the law when discrimination occurs to provide fair remedies to the victims of unfair treatment. We must always be mindful of being fair to both parties in a dispute. I believe strongly in a balance of rights, and that everyone is entitled to freedom and equality in dignity and rights. We exist, and are committed to protecting freedom and rights, not curtailing them.

I am particularly looking forward to the new Human Rights Code's protection of the disabled. Disabled people encounter discrimination and attitudinal barriers which, in many cases, gratuitously restrict them in many areas of employment and life in general. The handicapped are capable of and willing to participate in almost all activities and jobs. Rather than proving to be financially excessive, few adaptations are required, at minimal, if any cost. From my own experience, I have enjoyed the perception that the disabled are anxious to be tax payers, rather than tax burdens.

The staff of the Ontario Human Rights Commission continues to provide outstanding service. I wish to express my admiration and gratitude for the excellent quality of their work. This past year, our Commission has greatly increased the use of the Rapid Charge case processing system. As a result, our caseload backlog has been significantly reduced, allowing us to function far more efficiently and productively, without any decrease in the quality of our case work.

As always, the most important aspect of human rights is the goodwill and assistance of all residents in Ontario. The Ontario Human Rights Commission cannot create a society of equality of opportunity and justice on its own. Individuals, community organizations, business, labour, religious institutions, the media, law enforcement agencies, courts, government and all institutions in society must be willing to work together to translate the spirit of the Ontario Human Rights Code into everyday reality, to make Ontario a better place for all of us.

Canon Borden Purcell,
Chairman

The Commission

Chairman: Canon Borden C. Purcell

Canon Purcell was born in Athens, Ontario and left his position as rector of the largest Anglican Parish in Ottawa in order to assume his duties as the new Chairman of the Ontario Human Rights Commission. The first clergyman to head such a commission in Ontario, Canon Purcell has planned and convened numerous ecumenical events that include conferences on racism, refugees and other disadvantaged persons. He is also involved in several international organizations on human rights.

Vice-Chairman: Rabbi W. Gunther Plaut

Rabbi Plaut is a veteran civil libertarian and social commentator. He has been a lawyer, clergyman and author. In December 1978, he was awarded the Order of Canada. He is the editor of the commission's newsletter, *Affirmation*, and has authored 15 books and numerous articles.

Past-Chairman: Dorothea Crittenden (term expired Feb. 18, 1982)

Dorothea Crittenden was the first woman to head the Ontario Human Rights Commission. Her knowledge of the problems and opportunities of women in employment and her deep interest in public issues spans more than 40 years of civic and public service. Her knowledge and commitment to human rights over the last four years served to establish her imprint on the direction and programs of the Commission.

Race Relations Commissioner: Dr. Bhausaheb Ubale

Dr. Ubale was born in India and educated in the United Kingdom. He holds a Ph.D in Economics. He authored a report entitled: "Equal Opportunity and Public Policy: A report on concerns of the South Asian Canadian community regarding their place in the Canadian mosaic." Dr. Ubale was instrumental in a police training program on race relations now being given at the Metropolitan Toronto Police College.

Commissioner: Peter Cicchi

Peter Cicchi has a long and illustrious history of community and ethnocultural involvement. He has chaired, co-founded and served as a member of municipal and cultural committees, such as the Federal Consultative Council on Multiculturalism, and is the recipient of citations from the Government of Canada, the Government of Ontario and the City of Hamilton, where he resides. He was, as well, honoured by His Holiness Pope John Paul II with the title of Knight Commander of the Order of St. Gregory the Great. Mr. Cicchi is currently serving his second term as a member of the Ontario Human Rights Commission.

Commissioner: Dr. Albin T. Jousse

Dr. Jousse, a fellow of the Royal College of Physicians and Surgeons of Canada, has published more than 30 papers in his field of rehabilitation medicine. He is a leader in this field. He was both a professor and department head of Medicine at the University of Toronto. He is a member of many agencies concerned with the physically impaired, including the International Society of Paraplegia and the Canadian Neurological Society.



Canon Borden C. Purcell



Rabbi W. Gunther Plaut



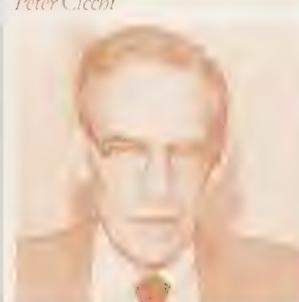
Dorothea Crittenden



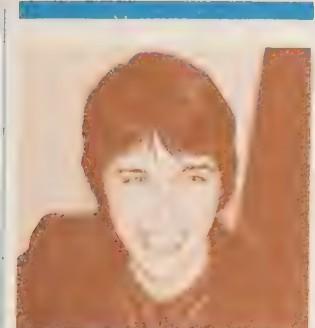
Dr. Bhausaheb Ubale



Peter Cicchi



Dr. Albin T. Jousse



Commissioner: Marie T. Marchand

Born in Moncton, N.B., Mrs. Marchand studied political science and public administration at the University of Ottawa. She was a candidate for the Nipissing riding in the 1979 and 1980 federal elections. Fluently bilingual, Mrs. Marchand has been extensively involved in many community organizations and is currently Manager of the North Bay Downtown Improvement Area.



Commissioner: Jane Pepino

(term expired March 1, 1982)

Ms. Pepino is an active partner in a Toronto law firm. A native of London, Ontario, she studied at the universities of Toronto and Texas, earning a Master of Law degree. She was called to the bar with honours in 1973. Her experience includes tours of duty as counsel for the Legal Aid Plan and as a volunteer for legal aid clinics and women's organizations. At time of printing, Ms. Pepino has resigned her seat with the Human Rights Commission, in order to serve as a member of the Board of Commissioners of Police of Metropolitan Toronto.



Commissioner: Andrew Fred Rickard

(term expired Feb. 18, 1982)

Chief Rickard is a Canadian Cree, born in Moose Factory, Ontario. He was one of the youngest chiefs ever elected in Canada and has served as vice-president and executive director of the Union of Ontario Indians. He has been Grand Chief of Grand Council Treaty No. 9.



Commissioner: Dr. Harry Parrott

Dr. Parrott brings a wealth of experience in public life to his new role as Commissioner. He has been actively involved in provincial politics, community service groups and is a past president of the Oxford County Red Cross and past campaign chairman of the Woodstock United Appeal. Dr. Parrott has recently resumed his professional dental practice in Woodstock, Ontario.



Commissioner—Race Relations Division: Beverley Salmon

Bev Salmon practiced her profession of Public Health Nursing in northern Ontario, Toronto and Detroit. She has been actively involved in issues pertaining to multi-culturalism, racism, education and the status of women, and was founding chairperson of the Black Liaison Committee (Toronto Board of Education).

Currently she serves on a Planning Board Committee (North York), is a member of the Arbitrators Institute of Canada, and Toronto Urban Alliance on Race Relations.



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The History of Human Rights Legislation in Ontario

The first human rights statute of the contemporary era was the Ontario Racial Discrimination Act of 1944 which prohibited publication, display or broadcast of anything indicating an intention to discriminate on the basis of "...race or creed." The Act was designed to combat the once-prevalent "whites only" signs which were prominently displayed in shop windows, amusement arcades, beaches and other places of public resort. Although such signs have largely disappeared, the legislative proscription remains, for a section based on the 1944 Act will be found in most Canadian human rights legislation.

The 1944 Racial Discrimination Act was an important pioneering statute because, for the first time, a legislature had explicitly declared that racial and religious discrimination was antithetical to public policy, and from then on, the judiciary could not simply subordinate human rights to commerce, contract or property. Its influence was confirmed in 1945 when Mr. Justice MacKay of the Ontario High Court cited the Ontario statute in striking down a racially discriminatory property covenant purporting to prohibit sale of land to "...Jews or persons of objectionable nationality." Since then, and despite occasional lapses, the Courts have generally demonstrated greater sensitivity to the pervasive and invidious consequences of racial discrimination and, obversely, the corresponding importance of legislation attempting to secure human rights.

In 1950, the Ontario Labour Relations Act was amended to ban discriminatory clauses in collective agreements, and the Conveyancing and Law of Property Act declared restrictive covenants in the sale of land to be null and void.

In 1951, Ontario enacted the first Fair Employment Practices Act and the Female Employees Fair Remuneration Act. Three years later, a Fair Accommodation Practices Act was passed. Other provinces soon followed Ontario's lead, and this legislation was the prototype of contemporary human rights codes.

The principal defect of the early fair employment and accommodation legislation was the lack of full-time staff to administer and enforce it. While it was clearly an improvement upon the cruder quasi-criminal legislation (such as the Saskatchewan Bill of Rights and the Ontario Racial Discrimination Act) it still continued, as Professor Walter Tarnopolsky has pointed out:

"...to place the whole emphasis of promot-

ing human rights upon the individual who has suffered most, and who is therefore in the least advantageous position to help himself. It places the administrative machinery of the State at the disposal of the victim of discrimination, but it approaches the whole problem as if it was wholly his problem and his responsibility. The result is that very few complaints were made, and little enforcement was achieved."

In 1958, the Ontario Anti-Discrimination Commission Act was passed. The Commission had three functions: to advise the Minister of Labour in regard to the administration of the 1951 Acts and the 1954 Act; to recommend to the Minister ways to improve the three Acts; and to undertake an educational program to familiarize the public with the provisions of the three Acts.

Once again, it was Ontario which in 1962 took the initiative of consolidating various anti-discrimination provisions into a comprehensive human rights code and providing full-time staff to administer it. A commission was created, charged with the duty "...to promote an understanding of, acceptance of and compliance with this Act," ultimately responsible to a Minister of the Crown, but fully independent in the day-to-day performance of its functions. Other provinces and the federal jurisdiction soon consolidated their legislation and also created human rights commissions to administer it.

The pioneering Ontario Human Rights Code of 1962 prohibited discrimination on grounds of race, creed, colour, nationality, ancestry or place of origin, in signs and notices; public accommodation; services and facilities; housing with more than six self-contained dwelling units; employment; and trade union membership.

In 1966, the Age Discrimination Act was enacted. It was followed by the Women's Equal Opportunity Act in 1970. In 1972, the Code was further consolidated to include the provisions of these Acts.

In 1962, the Commission, chaired by Dr. Louis Fine, was composed of civil servants. The Commission was reconstituted in 1975 as a public body of private citizens, reporting to the Minister of Labour, thus embodying a principle of independence.

It was in the fiscal year 1975-76 that the Commission under the leadership of its chairman, Dr. Thomas Symons, conducted the first comprehensive review of the Code since its enactment. Its report, "Life Together: A Report on Human Rights in Ontario," was later tabled in the legislature, and an entirely new Code was proclaimed as law in June, 1982. The provisions of this statute are described later in this annual report.

Landmark Cases

What is Discrimination?

Through the rulings of several landmark cases, a number of principles have emerged which assist in the interpretation and application of the Ontario Human Rights Code.

Factors in Addition to a Prohibited Ground:

Boards of inquiry have consistently held that to make a finding that discrimination has occurred, it is sufficient if the prohibited ground was present in the mind of the respondent, however minor a part it may have played in the eventual decision.

Zellers Ltd. and Segrave (1975):

In the first board of inquiry to establish this principle, Mr. Segrave had complained of discrimination because of his sex and marital status when he applied for two separate jobs with Zellers Ltd. In the course of his interview for a job as a personnel management trainee, he was informed that all employees in those positions were female and that the rate of pay would be too low for his consideration. In spite of his protestations that the pay was adequate, the interviewer, it was judged, dissuaded him from pursuing this job.

During the course of the interview for the second job of credit manager trainee, Mr. Segrave was asked a series of questions relating to his marital status. Upon discovering he had been recently divorced, the interviewer terminated the interview by saying that company policy considered a recently divorced applicant as undesirable because the trauma of the divorce would probably lead to an unstable work life.

While the respondent, Zellers Ltd., clearly practised discriminatory procedures in their hiring process, there were other factors on which they based their decision. Mr. Segrave was judged by the interviewer to be improperly dressed and he had recently been released from his job. The board ruled, in spite of the validity of these latter factors, that company hiring policy was discriminatory under the provisions of the Code. Because company policy was discriminatory and therefore was a factor in the mind of the company representatives, it was held that discrimination did indeed take place. The board ruled in favour of Segrave, and ordered the company to bring its policies in line with the provisions of the Code, to arrange an interview with Mr. Segrave by an independent consulting firm, and to pay him \$75 in compensation.



Discrimination for Fear of Economic Loss:

Huber and Wilkinson, Jones (1976):

In this case, Mr. and Mrs. Huber owned an apartment building in St. Catharines. Mrs. Jones, on behalf of her sister, Mrs. Wilkinson, responded to a newspaper advertisement for an apartment in the Huber building. Mr. Huber, on discovering that Mrs. Jones was black, refused to show the apartment to her, not because of any personal racial animosity to blacks, but rather because he feared he would lose tenants if he were to rent to blacks.

Under the Code, it matters not what the motivating reason for the racially discriminatory act is. A person cannot avoid liability under the Code by arguing that he has discriminated against an individual, not because he himself objects to his race or colour, but because others do. Although the Hubers professed to bear no personal prejudice or adverse feelings towards blacks, they were nevertheless responsible for a contravention of the Code.

The Hubers countered that the government was interfering with their rights to conduct their business privately and to rent to tenants of their own choosing. The board ruled that "...at least in Ontario, human rights and the dignity of every person are not subsidiary or secondary to property rights." The contravention was upheld, and the respondent was ordered to pay Mrs. Wilkinson \$50 in compensation and to notify the Commission of all vacancies for a one-year period.

Systemic Discrimination:

Toronto General Hospital and Morgan (1977):

In her complaint, Mrs. Morgan alleged that her four responses to advertised positions of Food Service Supervisor with the Toronto General Hospital were treated in a discriminatory fashion. In fact, she was not hired, nor was she even granted an interview. She was never seriously considered, in spite of the fact that her qualifications were equal to or better than those of some white applicants.

During the course of the inquiry, it became evident to the board that the Toronto General Hospital in no way practised institutionalized discrimination with respect to non-supervisory positions. The staff of the hospital is multi-racial. However, this case dealt with the hiring of personnel in a supervisory capacity, and on this level there was no evidence that showed the hiring or promotion of supervisors who were black.

During the period involved in Mrs. Morgan's complaint, her racial background was never raised as an issue. But the board found evidence that, in the hospital's evaluation of applications for supervisory positions, those of black applicants tended to be screened out.

The board of inquiry found in favour of Mrs. Morgan and awarded her a cash settlement of \$1,700 "as general damages suffered by way of humiliation, injury to feelings and dignity caused by the act of discrimination."

Non-discriminatory Motive or Intent Resulting in Discrimination:

S.I.S. Ltd. and Singh (1977):

A further issue is whether the motive for a discriminatory act or the intention of the respondent is relevant to a finding of discrimination. Here, an employment requirement which applies to all employees may result in excluding certain job applicants, even though there is no intention to discriminate against them.

Mr. Singh responded to an advertisement for a security guard with Security Investigation Services Ltd. Although he met all the requirements for employment, except height, which the company was willing to waive, he could not by virtue of his religious beliefs, conform to the company dress standard. All employees of S.I.S. are required to wear the company uniform and be clean shaven.

Mr. Singh is a member of the Sikh faith and as such must never cut his hair or shave his beard. In addition, all Sikh males are required to wear turbans. Obviously Mr. Singh could not wear the uniform cap and his beard contravened the dress code. Therefore he was not hired for the job.

The board laid down three propositions in an attempt to balance the competing interests of the employer and employee:

- If the result of applying a general employment regulation is to exclude a religious group, there is a *prima facie* case of discrimination;
- However, an employment regulation that applies to all employees equally but has the effect of excluding a religious group will be valid if the regulation was made in good faith and is reasonably necessary to the employer's business operations;
- Once a *prima facie* case of discrimination has been established, the onus is on the employer to demonstrate that he is unable to reasonably accommodate an employee's religious observance or practice without undue hardship on the conduct of his business.

The complaint was upheld and the company ordered to find a way to accommodate the Sikh dress code within their own dress regulations. It was further ordered that Mr. Singh be offered the next opportunity of employment by S.I.S. Ltd.

This type of discrimination is now specifically covered in the new Code.

Applications of Grounds of Discrimination: Racial Harassment:

Ford Motor Co. and Simms (1970):

Prohibited discrimination includes discrimination against any employee with regard to any term or condition of employment.

The question in Simms v. Ford Motor Co. was whether racially derogatory language by a plant foreman towards a black employee contravened the Code. The board chairman took a wide view of the phrase "term or condition of employment," and included in the definition considerations of atmosphere in the workplace and working conditions.

An isolated incident of racially insulting language was not enough to breach the Code. But if it were repeated even by non-supervisory employees this could create an unfair working condition and constitute discrimination. It is the employer's responsibility to remove the cause of discriminatory working conditions and maintain a favourable atmosphere for all employees. Prior knowledge and passive acquiescence by the employer would make him liable.

Sex Discrimination:

Equal Pay for Equal Work:

Children's Psychiatric Research Institute, Byron and Gatschene, Alcock (1967):

Two female hospital aides alleged they were performing the same duties as male hospital attendants. The rates of pay were less for the women, and this constituted discrimination in violation of the Code.

The board ruled in the women's favour, recommending that new job classifications be created and salary structures devised that would embrace both groups of employees, and provide equalization of compensation for similar work performance.

This type of discrimination is now covered under the Employment Standards Act.

Women in Non-Traditional Jobs:

London Driv-ur-Self Ltd. and Shack (1974):

Ms. Shack complained of sex discrimination in being denied employment as a car rental clerk.

She alleged that a man was being sought because of the demands of the job. Driving a 5-ton truck, physical exertion and evening shifts were aspects of the job which the employer considered women to be unable to perform.

The decision of the board was in favour of the complainant. It was held that in spite of the concerns of the employer, a woman's acceptance of inherent risks in a job is her sole responsibility and has no bearing on her ability to perform the job. The law provides that women have the power to decide whether or not to take on "unromantic" tasks.

Sexual Harassment:

Flaming Steer Steak House Tavern Inc. and Bell, Korczak (1980):

Ms. Bell and Ms. Korczak alleged dismissal from employment because of their refusal to accept the sexual advances of their employer. This was the first such case to come before a board of inquiry and although the individual complaints were dismissed on their facts, several important principles emerged.

The board stated that: "Where a woman's equal access is denied or when terms and conditions differ when compared to male employees, the woman is being discriminated against." Thus, sexual harassment can constitute discrimination on the basis of sex, in contravention of the Code.

Forms of conduct prohibited include coerced sexual intercourse, unsolicited physical contact and persistent propositions. The board went on to provide for corporate liability where a member of management engages in discriminatory behaviour.

Creed:

As an Occupational Qualification:

Ottawa Separate School Board and Gore (1971):

In response to an ad, Ms. Gore applied for a job as a secretary with the Ottawa Separate School Board. However, upon application, she was informed that only Catholic applicants would be hired. A non-Catholic, she lodged a complaint claiming this was not a reasonable occupational requirement for clerical staff.

This was the first such inquiry to deal with the issue and two questions were raised. First, was this a reasonable qualification and secondly, was the section rendered inoperative because of Section 93 of the British North America Act?

The Separate School Board based their claim on a statement by the Archbishop that "basically, a Catholic School is one in which God, his truth, his life are integrated into the entire syllabus,

curriculum and life of the school." The board found for the complainant, and ruled that unless she was hostile and unco-operative to the Catholic creed, Ms. Gore would not have to be a Catholic in order to fulfill her job requirements. Further, it was judged that legislation providing for Separate Schools was the responsibility of the province and its laws would apply.

Creed:

Practice and Belief:

In the case cited earlier of Singh v. S.I.S. Ltd. it was claimed that a person cannot be discriminated against in employment because of creed. Religious practices provided the point of contention in this case.

Mr. Singh, a member of the Sikh religion wore a turban and beard as part of his religious practice. He would suffer expulsion from his faith and peers were he to do otherwise. In order for him to qualify for the job with S.I.S. Ltd., he would be required to wear a cap and shave his beard. Although no malice was intended toward Mr. Singh or his group by S.I.S., it was judged that in making this dress code a requirement for employment, S.I.S. was in fact being discriminatory.

The board ordered that the company modify its requirements to accommodate Mr. Singh and other practicing Sikhs, providing they meet the other requirements.

Mandatory Retirement Before Age 65:

Municipality of Etobicoke and Hall, Gray (1982):

Messrs. Hall and Gray were two firefighters employed by the Municipality of Etobicoke. Upon reaching the age of sixty years their employment was terminated, a condition of their employment under the contract negotiated by their union.

Both men filed a complaint with the Commission. The board of inquiry decided that compulsory retirement amounted to a refusal to continue to employ, contrary to the Code. The board held that compulsory retirement was not a valid occupational qualification and that, providing the two men could meet the physical and mental requirements of the job, they should be reinstated. It ordered, as well, compensation for loss of earnings.

In an appeal to the Supreme Court of Canada, it was claimed by the Municipality that the mandatory retirement was a *bona fide* occupational qualification. However, the Court held that to be *bona fide*, the qualification must be applied in good faith, and be reasonably necessary to ensure proper job performance.

In dealing with the negotiated union contract, it was decided that to give it effect would allow people to work outside the provisions of the public policy endorsed and legislated in the Code. "The Human Rights Code has been enacted by the legislature of the province of Ontario for the benefit of the community at large and of its individual members and clearly falls within the category of enactment which may not be waived or varied by private contract..." In other words, the Code is established as having primacy over private contracts and may have the effect of negating some of the clauses contained within those contracts.

Nationality and Citizenship:

Algoma University College and Rajput (1975):

The Code holds that a person cannot be denied employment in Ontario because of nationality, among other grounds.

Dr. Rajput's application for a position as professor of sociology at Algoma College was turned down by the principal because his qualifications were deemed inadequate, and he was not a Canadian citizen. His appointment would create an all-Pakistani department which the principal felt would be unacceptable to the community. Dr. Rajput was a landed immigrant, but not a Canadian citizen.

Although much of the argument hinged on the Canadianization of Canadian universities, the issue of the complaint was discrimination based on nationality.

Since the term "nationality" was deemed to include the concept of citizenship, the board held for the complainant that, in fact, the employer's requirement of Canadian citizenship was contrary to the Code.

The board ordered that Dr. Rajput receive financial compensation for lost wages, out-of-pocket expenses and an offer for the next available position. The monetary award totalled \$18,626.26, the highest award ordered by a board to date.

Discrimination by Association:

Johnstone and Jahn (1977):

Ms. Jahn, who had rented a small house on the property of Mr. Johnstone, claimed she was forced to move from the house because of her association with a black man. In fact, the man was a dinner guest at Ms. Jahn's house and had been observed arriving by the landlord.

This precipitated both a phone call and a visit by Mr. Johnstone to Ms. Jahn, complaining that he had been insulted by the black man's presence on his property. He ordered the visitor to leave and then gave Ms. Jahn an eviction notice. She

then filed a complaint with the Commission. This was the first such case to consider the meaning and application of the provision forbidding discrimination in housing because of association with a protected group.

The board of inquiry ruled for the complainant, charging that her rights to the "quiet enjoyment" of the rented property had been denied through her landlord's conduct.

The board ordered financial compensation for damages and out-of-pocket expenses, a letter of apology and a letter of assurance that the landlord would conform to the letter and spirit of the Code in the future.

The principle of discrimination because of association has been specifically prohibited in all areas of coverage under the new Code.

Reprisal to a Complaint:

Norseman Plastics Ltd. and Blackstock (1978):

Ms. Blackstock claimed discriminatory practices against Howard Walton, the owner of Norseman Plastics. She had filed a complaint with the Commission, which was settled in conciliation, and her employment was reinstated.

Subsequent to this action, Ms. Blackstock was again fired, allegedly for diminished performance and insubordination. Through the course of the investigation it was discovered that Mr. Walton resented the imposition of the Commission and specifically Ms. Blackstock's involvement in a complaint under the Code.

The board decision stated: "Howard Walton's position was that the Commission was involved unnecessarily in the affairs of his company...that the amount of time devoted by the Commission to his company's affairs constituted harassment...and he resented the fact that Gloria Blackstock had brought this about."

The Code prohibits taking a reprisal against a person because that person has filed a complaint with the Commission.

Having found a breach of the Code, the board ordered financial compensation for lost earnings.

Remedies

General Damages:

Golas and Gabidon (1973):

Financial compensation is often awarded to complainants in the resolution of a complaint. This may take two forms: an order of compensation which pays any out-of-pocket expenses, lost earnings, or other monetary losses, and financial compensation to alleviate the humiliation and indignity of the discriminatory act. The latter is known as general damages.

Ms. Gabbidon had been denied residential accommodation because of her race and colour. The board of inquiry found that discrimination had occurred, and ordered financial compensation to cover out-of-pocket expenses. In addition, the respondent was ordered to post Human Rights Code cards on the premises and keep the Commission advised of any vacancies for the period of one year. This case marks the first time an award for general damages was ordered. In addition to out-of-pocket expenses, financial compensation of \$100 was ordered for insult to dignity, on the basis that "an act of racial discrimination is a denial of the very humanity of the person resulting in feelings of humiliation and embarrassment."

General damages are awarded quite regularly, the largest to date in Ontario being \$8,000.

Affirmative Action:

L.C.B.O. (Brockville) and Hendry (1980):

Ms. Hendry had worked several years at the L.C.B.O. in Brockville as a part-time employee. While her work record appeared to be good, an application for full-time employment did not seem to be receiving serious attention and she was finally dismissed. The board of inquiry found that she had been let go because of her sex and management's inability to change from traditional views of different occupational roles for men and women.

Through the course of the inquiry, it was discovered that full-time applications are processed centrally in the Toronto headquarters, but that a systematic approach to hiring had not been installed. There appeared to be no examination of applicants on a comparative basis.

The board, finding discrimination, awarded financial compensation for lost earnings and general damages, ordered the posting of Human Rights Code cards in all L.C.B.O. outlets and a letter of apology. In this landmark case, an affirmative action program for women was ordered, to be co-ordinated by the Women Crown Employees Office, and the monitoring of the respondents employment practices for one year.

Racial Harassment and Monitoring:

F.W. Woolworth Co. Ltd. and Dhillon (1982):

Mr. Dhillon filed a complaint of discriminatory dismissal, based on his nationality, race and colour. Through the course of the board of inquiry it was found that the company's warehouse employees experienced a severe problem of verbal racial abuse. The white workers directed verbal slurs and written graffiti against the East Indian employees, of which Mr. Dhillon was a member.

In reaction to Mr. Dhillon's persistent complaints to his supervisor and to a conflict with his foreman, he was eventually released from employment. The board found that Mr. Dhillon had been the subject of continued verbal abuse, that the management, who had been made aware of the growing problem, had neglected their duty to provide a comfortable working atmosphere and had not removed the cause of the racial discrimination.

In remedy, the board ordered that Mr. Dhillon be awarded financial compensation for general damages, that corrective measures be instituted immediately to stop verbal abuse, and that a committee be formed to include management, employees and a member from the Commission, to assess and make suggestions as to how best to cope with race relations in the company. A final and landmark order was that the board would retain jurisdiction over the case for a six-month period following its decision, to give the respondent and the Commission the opportunity of redressing racial tension in the company. The board ordered that either the respondent or the Commission may request a continuation of the inquiry for the purpose of re-examining the situation.

Amendments to the Code:

The First Ruling Leading to an Amendment to the Code:

In 1967 the Code referred to housing as "any self-contained dwelling unit" but left the term undefined. A lengthy argument before the Supreme Court of Canada resulted in the interpretation of the words "self-contained dwelling unit" to be restricted to mean a self-contained house or an apartment within an apartment house. This excluded from the Code's protection tenants in lower-cost urban housing in such dwellings as flats, rented rooms and duplexes.

The Ontario legislature moved quickly to rectify this problem by amending the Code, to delete the phrase "self-contained dwelling unit" and to substitute "housing accommodation." This term is now defined specifically as "any place of dwelling except a place of dwelling being part of a building in which the owner or his family reside and the occupant or occupants of the place of dwelling are required to share a bathroom or kitchen facility with the owner or his family."



The New Ontario Human Rights Code

On June 15, 1982, a new Human Rights Code will become law. The new statute follows the only major comprehensive review of human rights protection in Ontario since the first Human Rights Code in Canada was enacted in 1962.

The new Code is the result of a major effort by the Ontario Human Rights Commission to address the urgent needs and changes in human rights in Ontario, through a study under the leadership of Dr. Thomas H. B. Symons, Chairman of the Commission from 1975 to 1978.

The report, entitled "Life Together: A Report on Human Rights in Ontario" was tabled in the legislature in 1977. The new Code that resulted from this report and from the careful review in the legislature and committee is a landmark contribution to human rights in Ontario.

Human rights issues have long dominated public concern and debate in this Province, and the Commission has a history of fine achievement in this vital area of public policy.

Among the highlights of the new provisions of the Code are the following:

The circumstances in which the Code applies are extended to include:

- Equal enjoyment without discrimination of goods, services and facilities generally, and not limited to those available in a place to which the public is customarily admitted.
- Right to contract on equal terms.
- Discrimination because of a person's association with a person identified by a prohibited ground.
- Practices that are not discriminatory on their face but which have an adverse impact upon a particular protected group, are prohibited.
- Harassment of an employee by the employer or another employee because of a prohibited ground of discrimination.
- Harassment of an occupant of accommodation by the landlord or another occupant because of a prohibited ground.
- Sexual solicitation, reprisal or threat of reprisal by a person in a position of authority.

The new Code is the first anti-discrimination legislation in Canada to provide explicit statutory protections related to harassment and sexual advances, although all Canadian Human Rights Commissions accept complaints in these areas.

Several new prohibited grounds have been added. Protection is now provided from discrimination because of handicap, which is defined to include real or perceived physical handicap, mental retardation or impairment, learning disability, or a mental disorder. Boards of inquiry are empowered to make orders respecting access or amenities for the handicapped, after a finding of discrimination has been made.

Other new grounds are the expansion of marital status to include housing; record of offences in employment; age, defined as 18 and over in all areas except employment, in which age is defined as 18 to 65; family status (the parent-child relationship); and receipt of public assistance in accommodation. In addition, discrimination in employment against domestic workers in a private household is now prohibited.

The Code now binds the Crown, and has primacy over other legislation. It also provides for additional sanctions against discrimination in employment by contractors under government contracts.

The former provisions related to special programs have been strengthened and expanded, and the Commission may now recommend the introduction and implementation of affirmative action programs. The functions of the Commission have been expanded to include statutory reference to the establishment of the Race Relations Division, composed of a Commissioner and two members. The Division, which was created in 1979, now has the statutory authority to inquire into conditions leading to tension or conflict based on race, colour, ethnic origin, or creed, and to alleviate such problems through its own programs or by assisting community groups or agencies in their mediation and preventative activities.

Other new functions of the Commission include the review of any statute or regulation and programs or policies established under statute. Following this review, the Commission may make recommendations on any provision, program or policy that is inconsistent with the spirit of the Code.

Commission Activities 1981-82

The Ontario Human Rights Commission engages in a wide variety of activities. The full Commission discusses all of the complaints of discrimination in which the parties have not reached a conciliated settlement. A recommendation is then made to the Minister of Labour whether or not a board of inquiry should be appointed. The full Commission also makes policy decisions on human rights issues. They grant or deny exemption requests from the Code's provisions and they may approve affirmative action programs. A case review panel of three Commissioners reviews all settled cases to make sure that the settlements are satisfactory and that the investigations are conducted properly.

Close contact is maintained by the Commission with business, labour, law enforcement agencies, education, media, religious institutions, social service agencies, community groups and government. The Commission maintains a liaison network with human rights agencies and organizations in Canada and around the world. For example, representatives of the Commission participated in the Annual Conference of the International Association of Official Human Rights Agencies.

In June of 1981, the Ontario Human Rights Commission hosted the annual Canadian Association of Statutory Human Rights Agencies Conference, which was held in Windsor. The theme of the four-day conference was the International Year of the Disabled. The keynote address on the new Ontario Human Rights Code was given by the then Minister of Labour, Dr. Robert Elgie. Over 100 Commissioners and staff from human rights commissions across Canada listened to guest speakers and participated in workshop discussions. Workshops focused on the rights of the disabled and one also focused on police-minority relations. The Deputy Premier of Ontario, the Honourable Robert Welch, was the dinner speaker at the closing banquet. The conference received a very favourable evaluation from the participants.

Affirmation

Rabbi W. Gunther Plaut, the Vice-Chairman of the Commission, is the editor of *Affirmation*. *Affirmation* is the Commission's publication which contains feature stories, examples of cases and settlements of the Commission, findings of boards of inquiries, editorials and articles on important human rights topics. Articles are

written by Commissioners, staff and interested members of the public. *Affirmation* has a circulation of 10,000 including employers, schools, community organizations and the public.

The first issue during the past fiscal year featured a story on Unconscious Racism. The term "unconscious racism" refers to situations where there is no intent to discriminate or to stereotype, yet the results of someone's words or actions creates a negative stereotype or causes discrimination to occur. The second issue highlighted the annual conference of the Canadian Association of Statutory Human Rights Agencies which the Ontario Human Rights Commission hosted in Windsor. The third issue of *Affirmation* featured an article by one of the Commissioners, Dr. Albin T. Jousse. Dr. Jousse is a well respected Canadian leader in the field of rehabilitation medicine, and he wrote on the nature and implications of physical handicaps in society and particularly in the workplace.

Commission Initiatives

Throughout the past year, the Commission increased its utilization of the Rapid Charge case processing system with its use of Fact Finding Conference. This procedure is explained in detail in the Complaint Procedures section of this report. During the year, the Rapid Charge system was fine-tuned from the experience that was gained. As a result, the Commission's caseload was significantly reduced and there was favourable reaction from complainants and respondents that cases are now completed more quickly without jeopardizing the quality of work. The Commission continues to review this procedure and make improvements to it.

Due to the large number of complaints in Metropolitan Toronto and its surrounding area, the Commission set up a new administrative region, Toronto Central, with its own supervisor and staff. The casework in the Metro area is now handled by three regions, Toronto East, West and Central, to better handle the heavy workload.

The Commission created a new position of in-house legal counsel. The complexity of cases increases each year which results in the need for more expert legal opinions to help resolve cases and to give the Commissioners better information for their disposition of unsettled cases. Thea Herman was hired to fill this position and her expert legal analysis has been a tremendous help to the Commission.

With the proclamation of the new Human Rights Code expected this year, the Commissioners required a great deal of information on dealing with the physically and developmentally handicapped. The Commission therefore set up a number of meetings throughout the province with disabled groups and visited many organizations and institutions that provide services to the handicapped. This will help the Commission to better serve the needs of the disabled and to make knowledgeable decisions on cases involving handicapped complainants.

December 10, 1981 marked the 33rd Anniversary of the United Nations Universal Declaration of Human Rights, whose principles are part of the preamble of the Ontario Human Rights Code. The Commission issued a public statement commemorating the occasion and called on municipalities in Ontario to declare December 10 as Human Rights Day. Toronto, Hamilton and many smaller communities did make such proclamations.

Other Activities

The new Chairman, Canon Purcell spoke at major functions throughout the province including Toronto, Ottawa, Kitchener and Hamilton. These involved employment conferences and seminars, religious meetings, labour seminars and community meetings. Canon Purcell hosted two meetings where he met with international officials, ambassadors and journalists. Representatives from Europe, Asia, Africa, the Middle East, South America and the United States discussed human rights in both the Ontario and international context.

The Vice-Chairman, Rabbi W. Gunther Plaut, besides being the editor of *Affirmation*, also spoke at many conferences, meetings and on radio and TV concerning human rights. Rabbi Plaut gave particular emphasis to the area of age discrimination. He also wrote a number of articles for the Toronto Globe and Mail on the new Human Rights Code.

Marie Marchand spoke at a number of meetings in northern Ontario. She represented the Commission at a day long conference of the Northern Ontario Association of Police Chiefs. In addition, she gave several interviews with the French media.

Peter Cicchi was involved in several human rights community projects in the Hamilton area. In particular, he was the catalyst of the well publicized Human Rights Day in Hamilton and the surrounding county on December 10, 1981.

Complaint Procedures

The Ontario Human Rights Commission administers the Ontario Human Rights Code, which prohibits discrimination in employment, vocational associations, services, goods, facilities, accommodation, contracts, signs and notices and reprisal actions, because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, age (18 and over in all areas but employment and 18-65 in employment), marital status, family status, handicap, record of offences (in employment only) and receipt of public assistance (in accommodation only). Also prohibited is harassment in employment and accommodation on the basis of all grounds, as well as sexual solicitations or advances made by a person in authority.

The Complaint

A Commission staff member will discuss the concerns of any person who has reason to believe that this Act has been contravened (the complainant), determine if these concerns fall within the Commission's jurisdiction, and if so, will take the complaint in the form prescribed by the Commission.

The complaint will then be registered, assigned to an investigating officer and served on the person(s) against whom it is made (the respondent).

In order to assist in the rapid determination of the issues, both the complainant and the respondent will be asked to complete a questionnaire. It is in the interests of both parties to complete these documents as thoroughly and as accurately as possible.

Section 7 of the Code provides the right to file or assist in the complaint procedure without fear of reprisal.

Fact Finding Conference

A Fact Finding Conference is normally held shortly after the filing of a complaint. Commission staff will conduct the conference, at which the complainant and the respondent are both present in order to provide their respective views on the substance of the matter. The purpose of the Fact Finding Conference is summarized below:

- (1) to determine the positions of the complainant and the respondent with respect to the complaint.
- (2) to obtain detailed evidence from both parties of the facts which gave rise to the complaint.

- (3) to provide an opportunity for a settlement of the complaint when the complainant, respondent and Commission representative feel it is appropriate.

Extended Investigation

Complaints that cannot be resolved upon the completion of the Fact Finding Conference will usually require a more extended investigation in order to unearth the facts that gave rise to the complaint.

In carrying out the investigation, an officer of the Commission may enter onto premises, ask for the production of documents, and speak to witnesses who may have information relevant to the complaint.

It is unlawful to obstruct an officer in the performance of these duties.

Formal Conciliation

Upon the completion of the extended investigation, the officer will once again meet with both the complainant and the respondent to review the findings in detail. The purpose of these conciliation efforts is to try to arrive at an amicable resolution of the complaint that is satisfactory to the parties involved.

The officer is not, however, empowered to make a final determination of the merits of the complaint.

The Commission

The Commissioners, as distinct from the staff, are members of the public appointed by the Lieutenant Governor of Ontario. They are responsible to the Minister of Labour for the administration of the Code.

For this reason, all cases that are settled are subject to ratification by the Commissioners before they may be closed.

Similarly, all cases that cannot be settled are referred to the Commission for its consideration of what further action, if any, ought to be taken.

Based upon their review and evaluation of the evidence, the Commissioners will request the Minister of Labour to appoint a board of inquiry or to dismiss the complaint.

If the Minister does not appoint a board of inquiry, the parties will be advised in writing of the reason for this decision.

Board of Inquiry

A board of inquiry is a quasi-judicial hearing that operates in accordance with the *Statutory Powers Procedure Act*.



The board will hear testimony given under oath and make a finding, based on the evidence, of whether or not the Code has been contravened. If the chairman finds that there has been no contravention, the case will be dismissed. If the finding is that there has been a contravention of the Code, a board order may be issued to provide remedy for the complainant and ensure the full compliance with the Code.

Any party may appeal the decision or order of the board to the Supreme Court of Ontario.

For further details please refer to a copy of the Code or contact the nearest office of the Ontario Human Rights Commission.

Disposition and Settlements 1981-82

Once the Commission is in receipt of a complaint, it is obliged to inquire into the allegations and to seek a settlement that is satisfactory to all parties through the conciliation process.

It is also through the conciliation process that the Commission clarifies any misunderstandings that gave rise to a complaint and undertakes to eliminate any employment or business practices that deny equality of opportunity to persons protected under the Code.

Tables 1, 2a and 2b show the disposition of complaints and the remedies and settlements achieved in conciliation during 1981-82 compared with the previous fiscal year.

The number of complaints resolved in 1981-82 totaled 1,000, which represents the highest number of complaints to be completed within the year in the Commission's history. This total marks an increase of nine per cent over the previous year. Complaints registered during the year totaled 695. The number of undisposed cases carried forward to 1982-83 also decreased from last year's total. This growth in productivity was due to a series of new administrative procedures that were initiated two years ago.

Table 1 shows the number of complaints resolved during 1981-82, and their disposition. During the fiscal year, the number of complaints settled in conciliation numbered 581, or 58 per cent of total. This marks an increase over the proportion of complaints settled during the previous fiscal year, in which the corresponding figure was 51 per cent.

Complaints dismissed numbered 381 (32% of the total) in 1981-82. This represents a decrease over the previous year, in which 38 per cent of complaints were dismissed.

Settlement Achieved:

The core principle of settlement is to bring about a fair resolution and to restore the complainant to the position he or she would have enjoyed had the discriminatory act not taken place.

Tables 2a and 2b show the settlements obtained in 1981-82, compared with those achieved in the previous year. Two hundred and six persons received a total of \$465,922 in compensation for earnings lost and out-of-pocket expenses incurred because of discrimination, as well as compensation for insult to their dignity. These figures represent a significant increase over the corresponding figures in 1980-81, when 124 complainants received a total of \$192,797.

An additional component of settlement is the wide range of preventative measures instituted by respondents, designed to ensure future compliance with the letter and spirit of the Code.

Sixteen affirmative action programs were initiated by respondents as part of the settlement during 1981-82, as were 1,130 reviews of and amendments to employment and business policies and practices designed to bring them into harmony with the provisions of the Code. In 1980-81, the corresponding figure was 889. The emphasis on preventative settlement is designed to address a variety of types of systemic discrimination or employment practices that are neutral on their face, but have an adverse impact on groups protected by the Code.

Such settlements include policy directives requiring compliance with the Code circulated to the respondent's staff, the review and amendment of any personnel document or practice that reflects a contravention of the Code, and human rights seminars for respondent's staff.

Among the records and documents reviewed by the Commission, in addition to the casework process, are employment application forms and employment advertising. In 1981-82, 538 application forms were reviewed and revised, and 158 advertisements were amended. In addition, 5,059 referrals to other agencies were arranged for visitors to the Commission whose problems lay beyond the jurisdiction of the Code (see table 3).

Table 4 shows the breakdown of all resolved complaints according to the section of the Code cited and the grounds of discrimination for 1981-82. Tables 5 contains the corresponding figures for the previous year.

Complaints of Discrimination in Employment:

Complaints alleging employment discrimination continued to represent the largest proportion of all complaints resolved. In 1981-82, 826 complaints of discrimination in employment were resolved or 83 per cent of a total of 1,000 cases closed. In 1980-81, 747 such complaints were dealt with, or 84 per cent of a total of 893 cases.

Discrimination in Housing and Public Accommodation, Services and Facilities:

Table 4 indicates that 12 per cent of total caseload cited discrimination in these areas. In 1981-82, 54 complaints of housing discrimination were resolved, or 5 per cent of total.

Section 2 of the Code prohibits discrimination with regard to access to public accommodation, services and facilities, and discriminatory terms and conditions with respect to these services or facilities. Both historically and in the present, this section is chiefly used by racial and religious minorities who are excluded from such public accommodation as hotels and resorts and from a relatively narrow range of services, for example, gas stations and barber shops. Recently, however, the application of this section has been greatly broadened to include a wide range of services and facilities, reflecting the social changes that have been evident in the past decade. In 1981-82, 61 complaints (7% of total) alleged violations of section 2.

Reprisals:

The Code also provides protection for persons who have reasonable grounds to believe that they have experienced discrimination because they have participated in a complaint under the statute. In 1981-82, 28 complaints alleging reprisal action were resolved.

Grounds of Discrimination under the Code:

Tables 4 and 5 reveal a comparison of complaints on all grounds of the Code in 1980-81 and 1981-82.

Race and Colour:

Complaints alleging discrimination because of race and colour have comprised the largest complaint category in all years of the Commission's operation. Since 1974-75, these complaints have totaled from 36 per cent to 56 per cent of all complaints resolved. In 1981-82, they numbered 421 of the 1,000 complaints closed, or 42 per cent of caseload. This represents a slight decrease over 1980-81 when 45 per cent of all complaints resolved alleged discrimination because of race and colour.

Nationality, Ancestry and Place of Origin:

It has been a trend in recent years for complaints on these grounds to decrease as a proportion of the overall caseload. Ninety-two such complaints (9% of a total of 1,000 complaints resolved in 1981-82) alleged discrimination on these grounds. This includes 18 complaints resolved that were filed by Native persons under the grounds of race, colour and ancestry.

Sex:

Complaints of sex and marital status discrimination totaled 372, or 37 per cent of cases closed in 1981-82. Of these cases, 302 were lodged by females and 70 by males. Complaints alleging sex discrimination have increased as a proportion of the total over the past three years, due to the

volume of complaints of sexual harassment in that period. Prior to 1979-80, complaints based upon sex represented from 23 to 27 per cent of total complaints resolved.

Complaints alleging sexual harassment numbered 87 in 1981-82, or nine per cent of all cases resolved. Of these, 64 were settled, 14 were dismissed and nine were withdrawn by the complainant. Sexual harassment complaints have represented the fastest growing complaint category over the past three-year period. Twenty-eight complainants received a total of \$40,188 in compensation for earnings lost and in damages for insult to their dignity. In 73 instances, the respondent took action to prevent future occurrences of sexual harassment as part of the settlement achieved in conciliation.

Creed:

Complaints alleging discrimination on the basis of creed totaled 35, or four per cent of cases resolved in 1981-82. A significant trend in recent years is a growing tendency for creed-based complaints to allege a refusal on the part of the employer to grant the employee days off for religious observances, where days of worship fall on a day other than Sunday. If an employment regulation is neutral in its terms, but has the effect of excluding a religious group, the employer must establish that the regulation is reasonably necessary to business operations. If it is not, the employer must try to accommodate employees' religious practices so far as is reasonably possible.

Age:

Complaints alleging discrimination in employment against persons because of their age numbered 79 or eight per cent of cases resolved in 1981-82. The percentage has been fairly constant since the age provisions were enacted in 1966, although the percentage of total cases alleging age discrimination increased from five per cent in 1979-80 to eight per cent in 1980-81 and 1981-82.

Boards of Inquiry:

If a complaint cannot be resolved to the satisfaction of the complainant, the respondent and the Commission, the Commission is obliged to recommend to the Minister of Labour whether or not a board of inquiry should be appointed.

The board of inquiry is appointed by the Minister under powers provided in the Code. According to the Code, the board must decide whether or not any party has contravened the

statute. If the board finds a violation, it may order any settlement and remedy that constitutes full compliance, as well as rectifies any injuries suffered by the complainant. Remedies for injury are of two main types: Those that compensate the victim of discrimination for lost earnings, expenses incurred as a result of discrimination and, where appropriate, the offer of the position, housing, public accommodation, services or facility that was denied; and those representing monetary compensation for general damages.

The order may include affirmative action, as well as educative and preventative measures such as human rights seminars and consultations.

Another important function of the board of inquiry is educational. Hearings into allegations of discriminatory conduct create a forum in which the many forms of discrimination can be identified and held up to both legal and public scrutiny.

Moreover, decisions are instrumental in the development of jurisprudence.

The number of complaints proceeding to boards of inquiry has increased significantly over recent years. In 1981-82, as table 6 shows, 43 hearings were appointed and 47 were completed. Of the completed boards, which involved a total of 49 complainants, 38 decisions found for the complainant, and in eight instances the finding was for the respondent. One board decision is under appeal, and two complaints were withdrawn by the complainant prior to the hearing.



Complaints of Discrimination 1981-1982

Employment:

A theatrical agency gave the complainant, a black Canadian citizen of Haitian origin, a one week contract to perform as a dancer in the lounge of an Ottawa hotel. The complainant alleged that when she reported for work, the hotel owner told her that the agency had been specifically told that she, the respondent, and her customers did not want black employees. After the respondent called the agency and was informed that no white replacement was available, she asked the complainant to work one evening until a replacement could be found. The complainant refused. Since the complainant had no means of transportation back to her home until the following day, the respondent drove her to the next town and gave her \$20 for her troubles, claiming the men who frequented the hotel were too prejudiced to make it advisable for the complainant to stay the night there. Her complaint alleged discrimination in employment because of her race, colour, ancestry or place of origin.

The evidence substantiated the allegations. The respondent's defense rested on the fact that her actions were not motivated by personal bias, but that she was following the dictates of her clientele. The respondent had purchased the hotel one month previous to the Commission's receiving the complaint.

In conciliation, the respondent agreed to pay the complainant \$1,000 in damages for insult to her dignity and \$100 in lost wages, as well as write her a letter of apology. The respondent also provided a letter of assurance to the Commission and posted prominently the Ontario Human Rights Code on her premises. Finally, it was agreed that the Commission would monitor employment practices at the hotel for two years.

The complainant, a black Canadian citizen of Grenadian origin, alleged that he was dismissed from his position as machinist by his foreman. A second complainant, who was of Indo-Guyanese ancestry, was also dismissed at this time. Both complainants alleged that this foreman, who was Chinese, gave other Chinese workers preferential treatment with respect to overtime and training at the expense of the black and East Indian workers. They also alleged that the foreman harassed the non-Chinese workers consistently, had stated that Chinese are the best workers and had offered, as reason for firing the

complainants, that they "did not fit in." The complaints alleged discrimination in employment because of race, colour, ancestry or place of origin.

The investigation revealed that the foreman had stated that Chinese are the best workers. Most of the workers interviewed felt that the foreman did, in fact, give preferential treatment to the Chinese workers and supported the allegation that the Chinese employees received better training opportunities, preferred working assignments and more overtime. Documentary evidence relating actual time allocations to various work assignments tended to support these allegations as well. Both complainants were found to be good workers.

There was no dispute that the Chinese workers had the highest production rates, but they also enjoyed more time on the machines.

There was direct evidence that the union steward had spoken to the foreman about his attitudes, and named both complainants in this connection. Subsequently the foreman warned the East Indian complainant and another non-white employee that he would do his best to fire whoever was saying he was prejudiced.

In conciliation, the employer agreed to pay each complainant \$700 in compensation for lost earnings and insult to dignity. A letter of assurance of non-discriminatory policy was sent to the Commission and human rights seminars were arranged for management and staff. As well, the respondent agreed to establish a policy promoting positive relations among plant employees, and to institute human rights and equal opportunity policies.

The complainant, a female immigrant from Jamaica, had been working as an industrial cleaner since 1977. In 1979, when a new manager joined the company, she alleged that the black employees were subjected to abuse and that the Portuguese workers received preferential treatment. The complainant alleged that she was fired after being falsely accused of slapping her forelady. The complaint alleged discrimination in employment because of race, colour, nationality, ancestry or place of origin.

Investigation revealed that there were no witnesses to the alleged slapping incident and the forelady did not respond to the human rights officer's phone calls or registered letters. The supervisor in question, along with two other supervisors, stated that the complainant was usually a good worker who got along well with her co-workers and obeyed instruction. However her supervisor maintained that on the occasion which supposedly led to the slapping,

the complainant had not cleaned an area she was told to. A review of personnel files proved inconclusive in establishing any pattern of dismissals with respect to blacks versus employees of Portuguese ancestry, but it was noted that no supervisory staff members were from visible minority groups.

Current and previous black employees shared the complainant's view that Portuguese employees enjoyed preferential treatment.

In conciliation the respondent company agreed to provide the complainant with a verbal and written apology, as well as pay her \$609.25 in compensation for lost wages. The employer also agreed to consult with the Commission with respect to a human rights training program for their management staff. At the time conciliation was concluded, the respondent company was already in the process of centralizing their hiring procedures, which would standardize selection. As well, they had implemented a job rotation system where possible, and centralized their personnel records.

The complainant, a black Canadian immigrant from Trinidad, was laid off from her sales position at an Ottawa shoe store by the assistant manager. The reason she was given for the lay-off was overstaffing and because wages had gone up, although subsequently six people were hired. The assistant manager told other employees that the complainant had been laid off for her poor sales record, despite the complainant's allegation that her record was good and that her job performance had never been called into question. In discussing another black applicant, the assistant manager was said to have stated that he would not care to be served by a black person. The complainant alleged discrimination in employment because of race, colour, nationality, ancestry and place of origin.

The investigation found that the complainant's sales record was, in fact, better than those of some of the other employees. Evidence also indicated that the assistant manager was known to make ethnic jokes in the store, and his attitude may have affected his evaluations of the complainant.

In conciliation, the complainant was awarded \$185.29 for lost wages and \$815 in compensation for insult to dignity. The respondent was also required to write her a letter of apology, as well as a letter of assurance to the Commission. Human Rights Code cards were to be posted on the respondent premises and staff were to be informed of the company's non-discriminatory policy.

The complainant, who lived in Ottawa, was employed as a counter clerk for one of a chain of specialty food stores. She alleged that her manager and district supervisor gave preferential treatment to the store's employees of German descent. She alleged that she, and other non-German staff, were subjected to verbal abuse by management employees, including the district supervisor. When she appealed to her union, it was suggested that she should be transferred, a solution the complainant rejected since she would still be under the same district supervisor.

A human rights officer arranged a meeting of the parties involved, and the following settlement was reached:

It was agreed that the employer would hold a staff meeting to discuss concerns of the complainant and other problems affecting employee relations. The respondent also agreed to post Declaration of Management Policy cards and submit a letter of assurance to the Commission of its future compliance with the Code. The complainant reported that since the meeting she has experienced no further problems.

The complainant, a female technical assistant to insurance brokers, alleged that she was bypassed twice for a position as a broker, while men who were trained by her were promoted. When she questioned these policies she was told that she lacked potential, although this was never clarified. The manager had referred to himself as a male chauvinist on several occasions. Her complaint alleged discrimination in employment because of sex.

Evidence indicated that the managers had concluded that both the complainant and another female technical assistant lacked potential to become brokers and had therefore brought in the outsiders to fill a newly-created position of junior brokers rather than train one of the assistants. Both men brought in were inexperienced. The managers' conclusions were not based on any objective guidelines, interviews, tests or comparisons along set standards.

Witnesses testified that they had heard one manager state that he was a male chauvinist and that he wanted a man for the new position. Further, it was revealed that at least two good female candidates had been available: one was rejected as lacking experience, although she was subsequently hired as a broker by another firm; evidence showed that the other was not even interviewed, apparently because of her sex. Personnel records documented a pattern of discrimination, demonstrating that at least three women had been kept in the position of assistants for several years while performing many of the duties of brokers.

In conciliation, the respondent agreed to amend its personnel policies to ensure equal opportunity employment, including a salary administration study, a job evaluation study, and a memorandum to all staff outlining the promotional policies of the company and its commitment to equality of opportunity. The complainant was to be offered a position as trainee broker and was awarded \$4,155.43 in retroactive wages to bring her up to the level of trainee broker. As well, a statement of non-discriminatory company policy was read by the vice-president of the respondent company to all staff at a special meeting held for that purpose.

The complainant had held the position of senior secretary and assistant to a doctor in a large clinic. When a young man joined the staff, the complainant alleged that he started to function as the doctor's assistant at a higher salary, and also received preferential treatment. In addition, a young and inexperienced female clerical worker was promoted to the position of senior secretary and began assigning work to the complainant.

There developed a personality conflict between these two women, since there was often an overlap in their duties. This conflict resulted in the younger secretary asking for a transfer, which was denied, and the complainant being dismissed. The complainant alleged discrimination in employment because of age and sex.

In establishing the facts of the case, the investigation revealed that the new male assistant had come from the position of administrative assistant to the director of medical services and had had a senior secretary working for him at that time. Thus he was already in a higher position than the complainant, with his duties and responsibilities being quite different from hers.

When the younger secretary was hired, she initially reported to both the complainant and the doctor. As the work in that department increased, the younger woman was promoted to the senior secretary position. Evidence showed that the complainant had not been given an opportunity to demonstrate her capabilities as an administrative assistant. It was also evident that whereas younger secretaries seemed to have room for promotion, senior secretaries had not the same opportunities.

The respondent agreed in conciliation to pay the complainant the sum of \$9,500 and a \$3,000 contribution to her Registered Retirement Savings Plan in compensation for lost earnings and insult to her dignity.

The complainant alleged that on the second day of her employment as cashier at a Hamilton variety store, the owner made suggestions to her of a sexual nature. She stated that she made it clear to the owner that his comments were unwelcome and that when he was confronted he apologized. However, following this incident, the complainant alleged that the owner began to harass her in front of the customers and made her working environment unbearable to the extent she was forced to quit her job. The complaint alleged discrimination in employment on the basis of sex.

The investigation supported the complainant's allegations. Several former female employees indicated that they too had quit because of the owner's sexual advances.

After completion of the investigation, the complainant could not be located, making it necessary to effect a memorandum of agreement in her absence. The memorandum required a letter of assurance from the respondent to the Ontario Human Rights Commission and a letter of regret to the complainant to be kept on the Commission file in the event of the complainant's making future contact. The respondent was to post Declaration of Management Policy cards at his premises and forward to the Commission the names of all new employees for two years. As well, a definition of sexual harassment and procedures to be followed if it occurs is included in the store's employment agreement, including the name of the local Human Rights officer.

The complainant, having been employed by the respondent company as a security receptionist, alleged discrimination in employment because of sex, when she was refused to be considered for a security guard position and subsequently dismissed. The investigation revealed that although she was refused the position because she did not meet the requirements, two males were hired who also did not meet the requirements. Further, the personnel requisition forms used by the company specified males.

Two female witnesses, one a former employee and another still employed with the company, were told by the employer that he didn't want to employ any more women as security guards once the security receptionist position was phased out.

In conciliation, the complainant received a cheque for \$3,000 in compensation for lost wages and insult to dignity.

The complainant alleged that during a job interview with a regional branch of a trust company, the manager asked her two questions about her religious background as well as other questions of a personal nature. The complaint alleged discrimination in employment because of creed.

During the investigation, the manager stated it was not his practice to ask questions about an applicant's religion, although he did not deny doing so in the case of the complainant.

Evidence also indicated that the complainant mentioned to others immediately after the interview that she had been asked questions about her religion. As well, one other employee testified that she had been asked questions which required her to give information about her religion.

In conciliation, it was agreed that the respondent would provide the complainant with a letter of apology and send written assurances to the Commission. As well, the respondent would write to all branch managers under his supervision reminding them of the trust company's non-discriminatory hiring policy, and reviewing interviewing and hiring procedures to bring them into harmony with the Code. Finally, the respondent agreed to accept Human Rights Code cards for the purpose of posting in all branch offices.

The complainant, a single male, was denied a permanent employment position with an Ontario municipality allegedly because a married man was apparently preferred. The complaint alleged discrimination in employment because of marital status.

The investigation established that the successful applicant was, in fact, married. A municipal official testified that in telephone conversations with both the utilities committee chairman and the clerk treasurer, they had indicated a preference for a married person over the complainant. Both the clerk treasurer and the town councillor repeated this policy to the Commission's officer during investigation of the complaint.

In conciliation, the complainant was awarded compensation of \$765.44 for lost wages. As well, the respondent agreed to provide the Commission a letter of assurance declaring non-discriminatory management policies.

The complainant was employed in a shoe store on a part-time basis. She sought advice and help from the Ontario Human Rights Commission because of sexual harassment by the store manager. Her complaint stated that shortly after her immediate supervisors became aware of her approach to the Commission, she was advised

that she had been taken off the part-time schedule. The complainant alleged reprisal on the grounds that the action of the store was based on her earlier contact with the Commission.

During the investigation, evidence of the manager's sexual harassment was provided by witnesses. No evidence was found to indicate that the complainant neglected her work while she was pursuing her earlier complaint.

In conciliation, it was agreed the respondent would pay the complainant \$180 in compensation for lost wages. The complainant was to be offered the next available part-time position. Finally, the respondent agreed to send a letter of assurance to the Commission of its intent to comply with the Code in future.

Housing, Public Services and Facilities

The complainant, a black Canadian male, applied in person for a vacant apartment unit. Having been informed by the receptionist that the vacancy still existed, the complainant alleged that he was told by the superintendent that nothing was available. Subsequently a white female friend of the complainant called the building and was told there were vacancies. She visited the building and was shown one of two available units. Later in the evening she returned to the building with the complainant who completed an application for rent form. The next day the complainant was notified that his application had not been accepted and that the rental agent had rented the apartment to someone else.

Although the evidence did not indicate complicity on the part of the rental agent or any other office personnel, it did confirm that the superintendent had screened out the complainant. The respondent manages two adjacent buildings with two other superintendents where blacks and other minorities are tenants. The investigation showed that there were no black tenants in the building where the complainant applied. There was some indication that this was not the case before the superintendent began his employment.

In conciliation, it was agreed that the management itself was not promoting a discriminatory housing policy, rather it was an independent action on the part of the superintendent. In fact, the management dismissed the superintendent on the ground that his attitude couldn't be changed.

It was agreed that the respondent would send a letter of apology to the complainant. The respondent also agreed to have discussions with all the property managers re-affirming the company's non-discriminatory policy, and to post Code cards in all 31 buildings managed by the respondent. Further, the complainant was offered an apartment and the respondent made a donation of \$100 to a charity of the complainant's choice, as a gesture of goodwill.

The complainant, a white Canadian woman, had been a resident of the respondent's building for over 10 years having maintained a good tenancy record during that period. In the Spring of 1980, a black friend of the complainant came from Barbados to study, and stayed at her apartment. Her complaint alleged that having been told by management that her friend could only remain two months, the complainant threatened to contact the Commission, and was then allowed to renew for the year with her friend being added to the lease.

Only one year later, when she asked the building superintendent why her name was absent from the list of renewals, the complainant was told her lease would not be renewed and that "she knew why." When she questioned further, the complainant was informed by the superintendent that there had been too many complaints, although the complainant was unaware of any of them. Since the complainant's friend was the only black resident in the building and since she believed they were good, if not model, tenants, she alleged discrimination in housing because of the race and colour of her co-tenant.

During the investigation, the respondent maintained that other tenants had complained of noise, although this was not substantiated by the residents who were alleged to have made them. The occupants of the two units below the complainant stated they had never heard any noise. Three neighbours believed the threatened eviction could have been because the co-tenant was black.

In conciliation, it was agreed that the lease would be renewed for both the complainant and her friend, and that a letter of assurance of future compliance with the Code would be sent to the Commission by the respondent's district manager.

The complainant, a black Canadian immigrant from Aruba, alleged that she had spoken to the superintendent of the respondent building about vacancies and was told nothing was available at that time or in the immediate future. Two days later she called and, without identifying herself,

was told an apartment would soon be available. A friend of the complainant called later and was told the same. When the complainant went again to speak to the superintendent in person, the complainant was told once more there was nothing coming available. Finally, another friend of the complainant called later to be told an apartment would soon be vacant. The complaint alleged discrimination in housing because of race, colour, nationality or place of origin.

During the investigation, sworn statements were obtained from the two friends of the complainant. An examination of the respondent's occupancy records indicated that at the time of the complaint several apartments may likely have been available. Also, the non-white tenancy rate of the respondent building was lower than that of neighbouring buildings.

In conciliation, the respondent agreed to send a letter of apology to the complainant. The respondent also agreed to send memos to all its building superintendents and property managers stating a policy of non-discrimination, as well as a letter to this effect to the Commission. Posting of Code cards in all the respondent's buildings was agreed to, as was a change in the respondent's administrative policy so that all signed applications, whether accepted or not, would be kept on file for one year. Finally, the respondent agreed to place a rental advertisement in one issue of *Contrast*, and to pay the complainant \$150 in compensation for insult to her dignity.

The complainant, a black woman of Jamaican origin, had been in the respondent's ladies' wear store two years previous to the time of the complaint, and had felt she had been improperly treated. What brought about the actual complaint was the complainant's more recent visit to the store when she was refused the purchase of a sweater, being told it could only be bought as a part of a suit.

Six days later a white friend of the complainant was able to purchase the same sweater as a single item. When the complainant questioned the same sales clerk as to this apparent inconsistency of policy, she was told that the sweater had been purchased as part of a complete suit. The complaint alleged discrimination in services customarily available to the public because of race, colour, ancestry or place of origin.

In conciliation, the respondent agreed to write a letter of apology to the complainant, and invite her to use the services of the store at any time. As well, the respondent agreed to write a letter of assurance to the Commission.

The complainant, who is of East Indian origin, sought admission to a production technology program at an Ontario community college. The complainant alleged that there were racial slogans written on his papers, and that when he reported these incidents to the program coordinator, nothing was done. He also alleged that he lost an employment opportunity because of a reference from this program coordinator. The complaint alleged discrimination in public services and facilities because of race, colour, nationality, ancestry or place of origin.

The investigation revealed that the program coordinator and another instructor had, in fact, spoken to their classes about racial slogans and that this seemed to have caused this discrimination to cease. However, the investigation also established that the community college was known for its racial graffiti in the male washrooms, and that no particular sensitivity was evident in the treatment of the many international students enrolled there.

In conciliation, the respondent agreed to have a seminar presented to college personnel by the Ontario Human Rights Commission. The college also agreed to consider the presentation of a human rights conference for the benefit of employers in the surrounding community. The respondent agreed to post Code cards throughout the campus and to send a letter of assurance to the Commission of its intent to comply with the Code.

The complainant, an active member of the Canadian Armed Forces, applied to the respondent, an insurance company, for a special insurance rate for drivers who, based on statistical data, are considered a better than average risk. His complaint alleged that he asked if the fact that he was single would disqualify him from the special rate. He was assured it would not. He later received a letter rejecting his application. The complaint alleged discrimination in public services because of marital status.

The investigation revealed that the insurance company's manual listed as a stipulation for this special rate that active military personnel were ineligible unless "permanently posted, married and residing with spouse or family."

In conciliation, the respondent company agreed to change the criteria for military personnel by deleting reference to marital status. The respondent also issued the complainant a cheque for \$37.40 to complete the refund on his policy, and agreed to post Code cards on its premises and to send a letter of assurance to the Commission of its intent to comply with the Code.

Decisions of Boards of Inquiry 1981-82

All cases that cannot be settled are referred to the Commission for its consideration of what further action, if any, ought to be taken.

Based upon their review and evaluation of the evidence, the Commissioners will make recommendation to the Minister of Labour with respect to the appointment or non-appointment of a board of inquiry.

A board of inquiry is a quasi-judicial hearing that operates in accordance with the *Statutory Powers Procedure Act*.

The board hears testimony given under oath and makes a finding, based on the evidence, of whether or not the Code has been contravened. If the chairman finds that there has been no contravention, the case will be dismissed. If the finding is that there has been a contravention of the Code, a board order may be issued to provide remedy for the complainant and ensure full compliance with the Code.

Any party may appeal the decision or order of the board to the Supreme Court of Ontario.

Grego Gardens (Windsor) and Wan, Chen, Soong

The complaints of discrimination because of race, colour, nationality, ancestry and place of origin, arose from separate incidents on consecutive days at the Grego Gardens, a "pick-your-own" vegetable farm operated by Mr. Peter. In each incident, the complainants, all of Chinese ancestry, were excluded from what had all the appearance of being a service open to the general public. Such exclusion would be in violation of the Code. A hearing to determine the case was held February 10 and 11, 1982. Although the incidents dealt with the same violation they were considered separately.

In the first instance, Mr. Wan, his wife, his two children, his sister and her husband, and two university students, having been attracted to Grego Gardens by roadside signs, arrived only to be told to leave by Mr. Peter, who claimed to have had experienced difficulty previously with another large group. According to the respondent's testimony, he was referring to large groups in general. Mr. Wan contended that his group had been mistaken for another group on account of their race and had been denied access to the Grego Gardens because of this. At issue is whether race was even a consideration in the respondent's actions, since the law requires that race or place of origin is not to be taken into

consideration, whether alone or in combination with other factors. The respondent did not seem entirely objective in his criteria for exclusion. Additional evidence revealed that Mr. Peter stated that he was having problems with "Oriental groups, Arabian groups and Italian groups."

The second incident, involving Ms. Soong, Ms. Chen and their families, occurred the next day. The two parties arrived in two cars, only to be told to leave before they had reached the field. The respondent testified that he believed they were connected to the group who had been there the day before.

The board deemed that in connecting the Soong and the Chen groups with the Wan group, the respondent's decision to exclude the Soongs and Chens was influenced by their race.

Although the complainants did not seem concerned with monetary compensation and only requested an apology, the board felt an award should be made to compensate for the complainants' feelings of disappointment with respect to their expectations of fair treatment in their chosen country.

It was therefore ordered that:

- the respondent pay each of the complainants \$200 compensation for injured feelings;
- the respondent keep posted prominently a sign supplied by the Ontario Human Rights Commission setting out the principles of the Code;
- the respondent provide a letter of apology to each of the complainants, with a copy to the Commission;
- the respondent provide a letter to the Ontario Human Rights Commission stating he will in future comply with the Code.

Mr. and Mrs. H.M. Meadows and MacAdam

The complaint alleged that the respondents, Mr. and Mrs. Meadows, refused to allow Ms. MacAdam to sublet the trailer she was renting from them to Mr. Brown and Ms. Hogarth because of the Native ancestry of Ms. Hogarth. This would be in violation of the Ontario Human Rights Code. A board of inquiry was appointed to hear the case on February 4, 1981.

As evidence was presented it became apparent that Mr. and Mrs. Meadows may have been uneasy about subletting to Ms. Hogarth and Mr. Brown for a number of reasons. First, the sublet, though previously discussed, may have seemed something of a fait accompli by the respondents when they discovered Mr. Brown apparently living in the trailer. Also, Mr. Brown and Ms. Hogarth were not married, which was against

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the Meadows' "rules" for renting, and Ms. Hogarth was eight months pregnant at the time, which violated the respondent's rental regulations because they felt the plumbing inadequate for the needs of a family.

Evidence was also brought forward to indicate that Ms. Hogarth did not look like a Native person, and although Mr. Meadows had made unfavourable allusions to Native Indians, there was no evidence to indicate that he was referring specifically to Ms. Hogarth. Finally there was the fact that the respondents rejected a number of other prospective renters of the trailer, none of whom were Native persons.

Therefore, since it could not be proven that there was any act of discrimination by either Mr. or Mrs. Meadows directed against Ms. MacAdam because of the ancestry of Ms. Hogarth, the complaint was dismissed.

Ontario Hydro and O'Brien

Mr. O'Brien alleged he applied for and was refused the position of apprentice electrician with Ontario Hydro, at which time he was 40 years old. He alleged that he was not seriously considered for this position because he was too old. A hearing of the complaint was held June 4, 1980.

There was conflicting evidence as to whether or not Mr. O'Brien had made a formal application, since Ontario Hydro had no record of it. Nonetheless the crux of the case was the nature of phone calls between Mr. Low, a staffing officer for the respondent at the time, and Mr. and Mrs. O'Brien.

From the testimony of the O'Briens and Mr. Low, although this was far from consistent, it became apparent that Mr. Low had mentioned age as a factor, in the context of the average age of applicants for apprentice positions. The board was of the opinion that the testimony of respondent representatives indicated that they believed that a man of Mr. O'Brien's education (degree in Electrical Engineering) and training (Teachers' College) would not be happy in an apprenticeship program and therefore, his being hired would not prove to be a wise investment on the part of Hydro. It should also be pointed out that the board believed that Ontario Hydro's general recruitment policies gave no indication of discrimination on the basis of age.

Nonetheless, the board felt that Ontario Hydro had used age as a factor and perhaps a significant factor in the discouragement of Mr. O'Brien from pursuing this job. In addition, the board found that age was not a *bona fide* occupational qualification for the position of apprentice electrician.

As a consequence, the board ordered the following:

- the respondent, Ontario Hydro, cease to contravene the Ontario Human Rights Code with respect to age discrimination;
- The respondent shall forward an application form to Mr. O'Brien, that it may be completed by him and given fair consideration by Ontario Hydro. The decision whether or not to hire the complainant and the reasons for the decision shall be communicated in writing to both the complainant and the Ontario Human Rights Commission.

Chez Moi Tavern and Bish

The complainant, Mr. Bish, alleged that when responding to a recruitment advertisement, he spoke to someone he assumed to be the bartender at the Chez Moi Tavern, and was informed "they were only looking for a waitress." Mr. Bish filed a complaint under the Ontario Human Rights Code alleging discrimination on the basis of sex. A hearing was held January 16, 1981.

In this hearing two separate but related issues were addressed: the first being the authority of the individual to whom the complainant spoke to act on behalf of Mr. Korenowsky, the owner; the second concerning the hiring practices of Mr. Korenowsky with respect to the two operations of his tavern—the beverage lounge and the dining room.

As for the first issue, the board found that the complainant was justified in assuming that the person he first spoke to had the authority of the employer. Moreover, there was evidence that his statements reflected an accurate picture of the hiring pattern at the Chez Moi.

On the second issue, Mr. Korenowsky himself stated that it was his personal preference to have waiters employed in the beverage lounge and waitresses employed in the dining room, on the grounds that only waiters could handle the heavy trays of drinks and cope with the unruly customers. On the other hand, Mr. Korenowsky could offer no reasons supporting his view that only women were suitable for his dining lounge. He did state that, in his experience, having waiters and waitresses working together led to undesirable personal interaction.

Despite some argument to the contrary, the board did not view Mr. Korenowsky's personal preference for hiring only waitresses for the lounge as a *bona fide* occupational requirement. The board therefore found that Chez Moi Tavern did refuse the complainant, Mr. Bish, employment because of his sex in violation of the Code.

Since evidence indicated that hiring practices had in the meantime been altered, the main decision before the board was compensation to the complainant. Since he had lost employment for a week, the board ordered:

- that the respondent pay the complainant \$100 for lost income;
- that the respondent post a copy of the Ontario Human Rights Code in his establishment.

F.W. Woolworth Company Ltd. and Dhillon

The complainant, Mr. Dhillon is of East Indian ancestry. He was dismissed from his position as a warehouseman at the F.W. Woolworth Co. Limited's Sheppard Avenue warehouse distribution centre in Toronto, where he had worked for two years. Mr. Dhillon claimed that the treatment he received while employed together with the termination of his employment constituted discrimination because of race, colour, nationality, ancestry and place of origin. The hearing was convened February 10, 1982.

There are some 20 to 25 employees of East Indian extraction at this warehouse out of a total of about 200 workers. Of these, several gave evidence of racial insults supporting Mr. Dhillon's claim. There were indications of obvious problems generally between the East Indian employees and the white employees which lent credence to the claim that Mr. Dhillon's actions and subsequent dismissal were related to the racial tension in the warehouse. Moreover, evidence showed that management was ineffective or indifferent to this situation, although they admitted in their testimony to being aware of it.

While other issues, such as holiday policy, order-filling procedures, an incident of demotion, were not, in isolation, evidence of racial discrimination, they again lent support to the notion of a general atmosphere of racial tension. While the board found that Mr. Dhillon was not at all justified in the anger and profanity he expressed to his superior, the board felt that this behaviour was in part due to the hostility of his work environment. It was felt that providing a proper working environment should be a condition of employment.

Consequently, the board ordered the following:

- compensation to Mr. Dhillon of \$1,000 as general damages for insult to his dignity;
- the respondent take steps to stop the incidence of verbal racial harassment at its warehouse;
- the respondent form an *ad hoc* Management/Employees Race Relations Committee consisting of equal numbers from management, the East Indian employees and the non-East Indian employees, together with an *ex officio* member appointed by the Ontario Human

Rights Commission. This committee is to meet at least once a month for the next four months.

The purpose of the committee is to establish effective communication on the issue of race relations in the work place and to suggest ways by which racial harassment can be eradicated.

Of single importance in this decision is the fact that the board of inquiry shall remain seized of jurisdiction for six months after the date of the decision in order to see that the *ad hoc* committee achieves its purpose.

Export Plastics Co. Ltd. and Williams

Ms. Williams, a black Canadian woman of Jamaican origin, held the position of assembly line supervisor at the Export Plastics Co. Ltd. Having, she believed, obtained sick leave without pay from her superiors, she returned to her employment after a surgical operation to find her supervisory position had been filled. She alleged that she was offered a lower position with lower pay and was told that if she did not accept it she could quit. Ms. Williams therefore alleged that she was discriminated against in her employment by the company on the basis of race, colour, nationality, ancestry and place of origin in contravention of the Ontario Human Rights Code. A hearing was held July 21, 1981.

This complaint raised two issues: first, was the complainant dismissed, refused continued employment, or discriminated against with respect to terms of employment, and second, was this for reasons connected with the complainant's race, colour and ancestry. The evidence with respect to the first issue indicated that clearly Ms. Williams was put in a position of accepting a demotion or quitting. Therefore, the board concluded that the complainant was in effect dismissed from the respondent company, and that no valid reasons were given for this action by the company's officers.

On the second issue, whether the complainant was dismissed for reasons of colour, the board found that evidence gathered by the Commission's officer indicated that the general manager of the respondent company was "definitely prejudiced against blacks" and that it had been his idea to demote Ms. Williams. Evidence also indicated that the complainant was a good worker, and that the plant superintendent's attitude towards the colour and background of the complainant was the significant factor in her being dismissed.

Therefore, the board found that the complainant's dismissal was discriminatory and ordered the following:

- the respondent compensate the complainant \$3,000 for lost pay and \$300 in damages for insult to her dignity.

Versailles Restaurant and Mantas Bros. Ltd., and La Bonte (Timmins) and Kavanagh

With respect to this complaint a settlement was reached between the complainant and the Commission and the respondent before the scheduled date of the hearing. The Minutes of Settlement agreed to were reviewed by the board, which then issued an order requiring the respondents, Versailles Restaurant and Mantas Brothers Ltd., to undertake certain actions by way of compensation of the complainant. The complaint against respondent Ms. La Bonte was withdrawn.

The following order was made:

- that the respondents pay the complainant \$500 compensation;
- that the respondents post conspicuously, in all establishments owned by them, the Ontario Human Rights Commission declaration of management policy card;
- that the respondents write a letter of apology to the complainant;
- that the respondents write a letter to the Ontario Human Rights Commission confirming they will henceforth abide by the Code.

Brewers Warehousing Co. Ltd. (Oshawa) and Earnshaw and Roberts

The complainant, Mrs. Roberts, alleged that while she was employed at the Brewers Warehousing Co. Ltd., she was denied promotion because of her sex, contrary to the Ontario Human Rights Code. The complaint arose out of a decision as to who should be promoted to a position that was to become vacant. Mrs. Roberts was a candidate for the job as was Mr. Blair. It was Mr. Blair who received the promotion. A hearing was held on April 14 and 15, 1981.

On the evidence it became apparent that Mrs. Roberts could well have been recommended to fill the position soon to be vacant, had the job not been expanded to become basically a managerial training position for which Mr. Blair had earlier applied. The board found that, in this case, Mr. Blair was much better qualified for this new position.

While the board felt there was some basis for Mrs. Roberts' perception that discrimination had taken place, and that the respondent company should clarify and explain its hiring policies, it was ruled that the selection of Mr. Blair over the complainant was based on his qualifications, not on sex. Therefore, the complaint was dismissed.

J.L.K. Kiriakopoulos Co. Ltd. and Tiffany's Restaurant (Hamilton) and Dubniczky, Proulx

The two female complainants alleged that they were denied employment at Tiffany's Restaurant because of their sex in violation of the Ontario Human Rights Code. A hearing was held May 26, 1981.

The parties were in agreement on the facts of the case. Evidence showed that the complainants answered an advertisement for "experienced waiters/waitresses in French service for an elegant dining room." Upon arriving at the respondent's premises they were informed that it was waiters only that were required for the dining room. This requirement, the board found, was not a *bona fide* qualification for the position but a personal one based on the owner's belief that for his dining room to be operated in the proper European style, only men must serve. This then was a clear case of discrimination on the basis of sex, in the view of the board.

As for the question of an appropriate order, the board took into consideration the fact that the complainants were not qualified to perform service with the level of expertise required, and thus elected not to award compensation for lost wages. Consequently, the board made the following order:

- that the respondent cease violation of the Ontario Human Rights Code in its hiring practices and signify this intention in a letter to the Chairman of the Ontario Human Rights Commission;
- that the respondent post conspicuously a copy of the Code at Tiffany's Restaurant;
- that the respondent pay the sum of \$75 to each of the complainants in compensation for insult to their dignity.

The Metropolitan Toronto Separate School Board and Morra

When Mr. Morra, a Roman Catholic, applied for a job as caretaker with the Metropolitan Separate School Board, he was informed that he could not be hired because he was not a Separate School supporter although he was eligible by law to be a Separate School supporter. It was agreed by all concerned that although Mr. Morra met all the qualifications for the job he could not be considered for employment because of the Board's policy that all personnel must be separate school supporters, if they are so eligible by law. Despite Mr. Morra's eligibility to be a separate school supporter, he had been educating his children within the public school system, and was therefore a Public School supporter. The complainant contended that the Board's policy constituted discrimination with respect to

employment because of creed. A hearing was held September 30, 1981.

The irony that became apparent in testimony heard by the board was that had Mr. Morra been a Protestant, or a member of any other religion, and thereby ineligible under the *Education Act* to be a Separate School supporter, he would have been hired. However, the board of inquiry was of the view that the School Board's direct reason for refusal was not Mr. Morra's creed, but rather was based on purely economic considerations, namely tax support, which originate not with the Metropolitan Separate School Board but with the Legislature of Ontario in the *Education Act*.

As a consequence, the board ruled that discrimination because of creed was not a factor in this case and the complaint was dismissed.

The Commission is appealing this decision to the Ontario Divisional Court.

Rex Pak Ltd. and Shakes

Mrs. Shakes, a black woman, alleged that she was denied employment by Rex Pak Ltd. on the basis of her colour in violation of the Ontario Human Rights Code. On June 10 and 11, 1981 hearings were held.

Evidence supplied by the complainant and supported in part by other testimony from the company indicated that Mrs. Shakes, having completed her application, was interviewed by a company representative. In the interview there were some questions indicating the preferability of certain shifts, the conversation being concluded by the company's request that Mrs. Shakes leave her application form and if she were needed she would be called. The employer next interviewed a white woman, to whom he offered a position. On learning this, the complainant concluded she had been a victim of discrimination.

The respondent explained that since Rex Pak was constantly altering its production, it was always in the market for at least the names and addresses of prospective employees. The company's personnel manager testified that on the day of Mrs. Shakes's application he might have received seventy to seventy-five applications and interviewed several applicants. The respondent stated that "a value judgement" was made regarding each application, as to which applicants would receive an interview. The board found that although this method of screening was a subjective one, there was no evidence that the judgements made were prejudiced by considerations of race or colour. Evidence showed the company was always an equal opportunity employer, and that on the day in question several white applicants had received

the same treatment as had Mrs. Shakes.

On all the evidence, the board ruled that the Commission had failed to prove that Mrs. Shakes was a victim of discrimination and the complaint was therefore dismissed.

Byron Jackson Division of Borg-Warner (Canada) and Baptiste, Fleming

The complaints against Byron Jackson related to a series of incidents, culminating in the dismissal of both Mr. Fleming and Mr. Baptiste. Both are black immigrants from Trinidad and Grenada, respectively. Both alleged that they had been acted against in a discriminatory manner. A hearing was held on September 29, 1980.

The first issue to be decided related to the relevance of an award handed down in January, 1980 by a three-person arbitration board convened to assess the validity of the complainants' grievances about their dismissal under the collective agreement. It was ruled by the board of inquiry that the Commission has discretion to fully investigate any human rights complaint and that, although the arbitration award is admissible as evidence to the hearing, the award is not conclusive of the issue. Rather, the board must reach an independent decision based on all the evidence before it.

Subsequent to this decision, the board addressed itself to the two main points of contention: were the complainants discriminated against in their employment on the basis of race, colour, nationality or place of origin; and were Mr. Baptiste or Mr. Fleming discriminated against in reprisal as a result of their complaint to the Commission.

When they began their employment with Byron Jackson, Mr. Baptiste and Mr. Fleming encountered difficulties with their day-shift foreman. As a result they complained to the Plant Superintendent and shortly thereafter the foreman was moved to another department, although it was not clear whether this was a direct consequence of the complaint. The inconclusiveness of this evidence is typical of almost all the evidence presented to the board.

The final incident which triggered the dismissal of both complainants was described through contradictory evidence as to whether their new shift foreman had made a racial remark to Mr. Baptiste and had pushed Mr. Fleming. Although the board felt that Byron Jackson did not handle this particular situation very well, the board could find no evidence of actual discriminatory behaviour on the part of the company or its management. As a consequence, all the complaints against the respondent were dismissed.

Super Great Submarine and Good Eats (Guelph), Gadroke and Cox, Cowell

Three complaints were made by Ms. Cox and two complaints were made by Ms. Cowell alleging incidents of sexual harassment on the part of Mr. Gadroke, owner and manager of the Super Great Submarine and Good Eats restaurant. A hearing was held May 8, 1980.

Both testified that Mr. Gadroke's advances began the first day of employment and continued until they felt compelled to cease working at his restaurant. Evidence was presented to indicate that Ms. Cox suffered emotionally because of Mr. Gadroke's treatment of her.

Witnesses, including several former employees, provided testimony supporting the allegations of the complainants. Mr. Gadroke's defenses: that they had quit because of his dissatisfaction with their work; had misunderstood his words and actions; and were pursuing this action as part of a dispute over wages, were found untenable by the board, as were his suggestions that it was the complainants who initiated the advances.

Since the evidence supported the complainants' allegation that sexual harassment had been, in effect, a term or condition of their employment in violation of the Code, the board ordered the following:

- that the complainant, Ms. Cox, be paid \$200 for lost wages and \$1,500 as general damages for insult to her dignity;
- that the complainant, Ms. Cowell, be paid \$200 for lost wages and \$750 as general damages for insult to her dignity;
- that the respondent, Mr. Gadroke, shall cease and desist the sexual harassment of employees under his supervision.

Candur Plastics Ltd. and Fuller

Ms. Fuller, a black Canadian woman of Jamaican origin, was dismissed from Candur Plastics Ltd. after being employed there for seven months. She alleged that this dismissal was because of race, colour, nationality, ancestry and place of origin, thus constituting a violation of the Human Rights Code. A hearing was held April 28 and 29, 1981.

Evidence revealed that the incident which precipitated the dismissal began with Ms. Fuller's being slapped in the face by the forelady who had been appointed to her position of authority just two days previously. This conflict may have been a by-product of the forelady having been chosen over a senior worker on this shift, and a personal friend of Ms. Fuller. The complainant reported the incident to the foreman, and an argument between them ensued. Ms. Fuller was then dismissed.

Since there was no evidence of the forelady having influenced the actual decision to dismiss the complainant, the board felt that her motives had no bearing on the case, especially since her outburst represented an isolated incident. As for the foreman's role, he never provided the complainant or his own superiors with a reason for her dismissal. This indicated to the board that the argument between Ms. Fuller and the foreman may not have caused the summary firing.

The evidence indicated to the board that the foreman, in making an example of Ms. Fuller to her co-workers by firing her, did not hold her in proper regard as a person and that her race, colour and place of origin influenced his conduct towards her.

Having found that discrimination had occurred, the Board made the following order:

- that the complainant receive from the respondent \$2,492 for loss of wages and \$100 for injured feelings;
- that the respondent send a letter of assurance to the Commission, undertaking to comply with the Code in future, and give notice of this letter to each of its employees having responsibility for personnel matters.

Beneficial Finance (Kingston) and Niedzwieki

The complainant, Ms. Niedzwieki, alleged that Mr. Hannah, manager for the respondent's Kingston branch, did not give proper consideration to her application for the position of assistant manager, which constituted discrimination against her because she was married. A hearing was held June 26, 1981.

Evidence revealed that Ms. Niedzwieki was qualified for the position, having held a similar position with the Guelph office of AVCO Financial Services, a competitor of the respondent. Since the complainant had married someone working for AVCO, she was obliged to resign her position because it was against that company's policy to employ both husband and wife within the same district.

When Ms. Niedzwieki initially spoke with the respondent about the position, it had just been filled, and a company official told Ms. Niedzwieki that he would let her know if the position became vacant and that he would check on Beneficial's policy regarding conflict of interest, since her husband worked for a competitor.

Later, in response to an advertisement, the complainant arranged to see the respondent again. The position of assistant manager had become vacant. There was conflicting testimony as to what was said at this meeting, but it was apparent to the board, following cross-examination of both the complainant and the respondent, that the issue of transferability was crucial to the respondent's decision. Moreover, testimony of a company representative indicated a pre-conceived notion with respect to the complainant's transferability based upon her marital status alone. Notes from the respondent's subsequent interview with an officer of the Ontario Human Rights Commission contain the statement that he was "definitely looking for a person who is single—easily transferable."

Had the company rejected the complainant's application on the grounds that it would have represented a conflict of interest, he would not have been acting in violation of the Code, the board noted. However, the board found that the fact that Ms. Niedzwieki was married was the basis for the decision not to hire her. There was no indication however that this decision was based on general company policy.

Having found that discrimination did occur, the board ordered the following:

- that the respondent write a letter of apology to Ms. Niedzwieki and pay her the sum of \$250 in compensation for insult to her dignity;
- that the respondent cooperate with the Ontario Human Rights Commission and the Women's Bureau of the Ontario Ministry of Labour with the aim of designing a program for more equitable distribution of men and women in senior positions in the company;
- that the respondent allow the Commission to monitor the company's employment practices for 12 months.

Vic and Tony Coiffure and Imberto

Mr. Imberto, a hairdresser for 19 years, alleged he was refused employment by the respondent, Vic and Tony Coiffure, on the basis that he was a male, in violation of the Ontario Human Rights Code. The respondents took the position that sex in this case was a *bona fide* occupational qualification and requirement for their particular job, thus exempting them from the provisions of the Code. A hearing was held April 6, 1981.

Evidence introduced at the hearing revealed that there was little argument as to the fact that the co-owners of the hairdressing salon had advertised for the position of hairdresser and had repeatedly turned down Mr. Imberto, claiming they were looking for a woman.

The respondents offered three defenses for this requirement: first, the salon had had an unfortunate experience with a male employee in the past; second, the owners indicated that the staff did not wish to work with a male co-worker and would resign if a male were hired; third, that some of the current clientele of the hairdressing studio would not feel comfortable having their hair done by a man.

With regard to the first defense, the board felt that a single previous bad experience with a male employee constituted the slenderest possible reason to support what was apparently a rooted predisposition to female employees at the time Mr. Imberto applied for the position.

As for the second defense, the board could not support the view that an employer's conduct should reflect the bias of his employees. To permit employers to raise a defense of this kind would obviously perpetuate the very practices and policies which the Code is designed to bring to an end.

The third defense, which suggested customer preference as a basis for invoking the Code's *bona fide* occupational qualification exception was more subtle in its implications. The board took the position that customer preference, to represent a legitimate defense, must be based on an informed judgement of the superiority of one sex over the other in the performance of the job in question. The evidence in this case clearly indicated that neither males in general nor Mr. Imberto in particular suffer inadequacies with respect to the occupation of hairdressing.

Since none of the defenses proved adequate, the board ruled that the respondents had discriminated against Mr. Imberto on the basis of sex and therefore ordered:

- that the respondents pay the complainant \$925 as compensation for the loss of employment opportunity, and an additional \$100 as compensation for mental stress;
- that the personal respondents send a letter of assurance to the Ontario Human Rights Commission that their business will, in the future, comply with the provisions of the Code.

Diamond Restaurant and Tavern and Cinkus

Ms. Cinkus filed a complaint with the Commission alleging she had been refused employment as a chef by the Diamond Restaurant and Tavern on the basis of her sex, in violation of the Ontario Human Rights Code. A hearing was held September 17, 1980.

The facts of the case as revealed in testimony indicated that Ms. Cinkus had in fact applied twice, the second time with a referral notice from Canada Manpower. In each case the owner told her that it was not a job for a woman.

Ms. Cinkus's qualifications for the position were never in question as she had several years experience both in Europe and in Canada. A counsellor for the Canada Employment Centre corroborated Ms. Cinkus's testimony and added that he had called the restaurant subsequent to Ms. Cinkus's refusal and received no satisfactory reply as to why Ms. Cinkus was turned down for the position.

The respondent's defense, that it was a misunderstanding arising from the restaurant owner's limited command of English, was rejected by the board in light of evidence to the contrary.

A second defense, seeking exception by way of sex being a *bona fide* requirement for the position, was brought forth based on the fact that the chef's job required lifting a heavy soup tureen from the floor to the stove. This was rejected since Ms. Cinkus had not been given a chance to demonstrate her ability to lift the tureen.

A final defense, stating that another chef had already been hired at the time of application, proved fallacious on examination of payroll records.

The board concluded that the respondent had discriminated against Ms. Cinkus with respect to her sex and ordered the following:

- that the respondent write a letter to the Commission indicating its intention to comply with the Code in future;
- that the respondent post Human Rights cards on its premises;
- that the restaurant be required to notify the Commission of all employment vacancies, prior to advertisement, for a period of one year;
- that the respondent pay Ms. Cinkus \$1,350 compensation for lost wages and personal and professional damages.

Ontario Hydro and Taylor

The complainant, Mr. Taylor, is black and was born and educated in Trinidad and Tobago. Mr. Taylor alleged that he was refused employment by Ontario Hydro on the basis of his race, colour, ancestry or place of origin, in violation of the Ontario Human Rights Code.

Evidence before the board indicated that two personnel officials of Ontario Hydro interviewed Mr. Taylor independently before comparing notes in order to arrive at a decision. The company's selection officer was looking for candidates with a recognized completed

apprenticeship in certain trades. He processes some 500 applications from trainees per year.

Further testimony revealed the following facts. Of the applicants receiving interviews, only about half are allowed to go on to complete a comprehensive aptitude test. Mr. Taylor did receive the aptitude test. His background was stronger in the area of auto mechanics than in industrial mechanics, and his score on the aptitude test was acceptable, but not high (in fact, several unsuccessful candidates had higher scores). Nonetheless, the company considered him a borderline candidate and reserved final judgement until interviewing further applicants. While his candidacy was under review, Mr. Taylor was sent medical forms, and a security clearance investigation was undertaken—both standard procedures for anyone being considered for employment at a nuclear power generating station.

The company's ultimate conclusion was that although Mr. Taylor could be trained, his qualifications were not acceptable at the level he was looking for.

Testimony from other applicants for the position indicated that there was no discrimination in the treatment of Mr. Taylor. It was also noted that the company had hired non-whites as nuclear industrial mechanics in the past.

In conclusion, the board ruled that Ontario Hydro had assessed Mr. Taylor's candidacy without discrimination because of race, colour, ancestry or place of origin and the complaint was therefore dismissed.

Timmins Police Force, etc. and Hartling

The complainant, Ms. Hartling, alleged that she sought employment with the Timmins, Ontario Police Force twice, being refused on each occasion. The first refusal was not the basis of the complaint, but did, in the board's opinion, provide relevant evidence to evaluate the second incident. The complainant alleged that she was denied employment on the basis of sex, in violation of the Ontario Human Rights Code. A hearing was held June 22, 1981.

The evidence revealed that there was no real dispute between Ms. Hartling and Chief Schwantz about the interview that was held between them. Essentially he asked why she thought she would be an asset to the force, and suggested the force could not bear the cost to extend the building for a new change room and washroom to accommodate a female constable. Although Chief Schwantz stated that he considered Ms. Hartling's communication skills not adequate for a police constable, he never did elaborate what qualifications were required.

Subsequent to this interview, Chief Schwantz was quoted in a Timmins newspaper article headlined, "Investment in Women Officers is Poor One." In this article, he claimed his comments were not based on sexual discrimination but on practical considerations. Nonetheless this public statement led to further articles and an interview with a Ms. Mahon, who, as an interested citizen was critical of Chief Schwantz's views on the hiring of women. From his own testimony, derived from his comments to Ms. Mahon, it became clear to the board that Chief Schwantz had no intention of hiring a woman as a police constable when he interviewed Ms. Hartling.

After hearing the testimony of the chairman of the Board of Commissioners of Police and the Mayor of Timmins, it appeared to the board that the Board of Commissioners generally rubber-stamped the Chief's recommendations. Further the board concluded that the physical requirements, though passed by the complainant herself, tended to have the effect of excluding women from the force. The Commissioners did not investigate the situation in the face of the newspaper commentary and deferred to the Chief's judgement, knowing the Chief did not want female constables.

The Chief's defense for his rejection of the complainant's application, namely her spelling and perceived lack of communications skills, seemed to the board to be rationalizations for the fact that he did not want to hire a woman.

The board of inquiry found both the Chief and the Board of Commissioners in violation of the Code with respect to discrimination against the complainant on the basis of her sex. It was noted that female constables have been hired since this complaint and that the regulations for hiring have been made more conducive to the hiring of women.

The board found that discrimination had occurred and ordered the following:

- that the respondents in future cease to contravene the Code with respect to sex discrimination.
- that the respondents grant the complainant the opportunity to take the standard test for applicants for the position of police constable and should she pass this test, her consequent interview include, as well as the usual interviewing officers, the members of the present Board of Police Commissioners for the City of Timmins;
- that, should the complainant pass the interview stage, she be offered a position when it becomes available. In all events, the Board of Police Commissioners shall report the result of

the interview to the Ontario Human Rights Commission;

- that the respondents pay Ms. Hartling \$3,000 in compensation for insult to her dignity.

The Borough of Etobicoke and The Ontario Human Rights Commission and Dunlop, Hall, Gray (an appeal heard before the Supreme Court of Canada)

The issue under appeal: was the Borough of Etobicoke in violation of the Ontario Human Rights Code with respect to age discrimination when it forced the mandatory retirement at age 60 of fire-fighters Hall and Gray.

The Code provides that an employer can place age requirements or limitations on a job if that requirement is *bona fide*. The first issue which the Supreme Court addressed was the interpretation of "*bona fide*." The Court held that *bona fide* has both a subjective and objective element. That is, the job requirement (in this case, mandatory retirement at age 60) must be both imposed in good faith and be objectively based, that is, it must be reasonably necessary to assure proper job performance. In this case, there was no question but that the requirement was honestly imposed. However, the Court felt that there was not sufficient evidence to indicate that it was objectively based.

The second important point made by the decision of the board of inquiry which found in favour of Mr. Hall and Mr. Gray was that requirements agreed upon in collective agreements are not binding where they violate the Code. The Supreme Court of Canada upheld this position as well, stating that the Human Rights Code has been enacted for the benefit of the community at large and of its individual members and may not be waived or varied by private contract.

Therefore the appeal was allowed with costs and the order of the board of inquiry was reinstated.

J.A. Wilson Display Ltd. and Van Der Linde

The complainant, Mr. Van Der Linde, alleged that he was denied employment by the respondent, J.A. Wilson Display Ltd. because of his age, in violation of the Ontario Human Rights Code. Hearings were held on October 6 and December 1, 1981.

The facts of the case are relatively clear. Mr. Van Der Linde was 63 years old when he applied for a job as production planner at the respondent company. He was well qualified, according to the terms set out in the advertisement, and he had considerable experience in related employment.

The testimony of the personnel official who conducted the interview tended to minimize lack of qualifications as a reason for rejecting Mr. Van Der Linde's candidacy for the job. The fact that a less qualified person was eventually hired tended to support this conclusion, in the opinion of the board.

Therefore the board found that discrimination had occurred. The board therefore ordered the following:

- that the respondent pay \$1,500 to Mr. Van Der Linde in compensation;
- that the respondent post not fewer than two copies of the Ontario Human Rights Code in their business premises.

Workmen's Compensation Board Hospital and Rehabilitation Centre and Singh

Mr. Singh, a baptised Sikh, alleged that he was discriminated against with respect to treatment and therapy by the Workmen's Compensation Board Hospital and Rehabilitation Centre because of his creed, in violation of the Ontario Human Rights Code.

Specifically, Mr. Singh alleged that he was required to refrain from wearing his kirpan, a ceremonial dagger the wearing of which is a major tenet of the Sikh religion, in the Hospital where he was to receive treatment for a back ailment. It was another patient who first brought the matter to the attention of a remedial gymnast employed by the hospital. The patients were assured that it was just a symbol and referred the matter to the Attendance Counsellor, who, citing hospital security rules, suggested to Mr. Singh that he consider wearing a kirpan that was more of a "jewelled symbol" rather than the eight inch kirpan which Mr. Singh had worn since baptism.

Mr. Singh chose not to return to the Hospital for treatment. Rather he filed a complaint with the Ontario Human Rights Commission, and a settlement was not reached. A hearing was held June, 1981.

The application of the Code to the facts of this case raised five specific issues:

1. Was the complainant denied accommodation, services or facilities customarily available to the public because of his creed? Evidence revealed that he was denied these services by the hospital. And since witnesses from the Sikh Community and Dr. Spellman, an expert witness, testified to the importance of the kirpan within the Sikh religion, this denial of services was because of creed, in the board's view.

2. Does the definition of creed protect an individually held religious belief which, although consistent with one's creed, is not an essential requirement of that same creed? In this issue, the board concluded that although the Sikh religion is not specific in the actual length of the kirpan, it was Mr. Singh's sincere belief, supported by custom, that his was of the necessary length. Even so, it remained open for the respondent Hospital to demonstrate that there are competing rights and policies that outweigh Mr. Singh's rights in this case. This was clarified in the decisions on the remaining three issues.

3. Was the respondent Hospital's rule barring offensive weapons supported by a business necessity? The board found the Hospital's need for a rule prohibiting weapons as being self-evident.

4. Can the kirpan be reasonably classified as an offensive weapon? Dr. Spellman stated that the weaponry aspect of the kirpan was very minimal today. That, and the fact that it was readily apparent that Mr. Singh had no intention of using it as a weapon, suggested to the board that it not be classified as such.

5. Could the respondent have reasonably accommodated Mr. Singh's religious belief? In view of the fact that other Toronto hospitals have made such accommodations and that the respondent's management made no attempt to reconcile Mr. Singh's religious beliefs with the patients or their own personnel, it was concluded by the board that reasonable accommodation could have been achieved had the respondent Hospital made the effort. It was noted, however, that there was no malice or intent on the part of the Hospital or its personnel to discriminate against the complainant, which fact led the board to be accommodating toward the respondent with respect to the issue of compensation. Therefore the board ordered the following:

- that the respondent Hospital should post copies of the Ontario Human Rights Code in conspicuous places in their premises;
- that Mr. Singh and any prospective Sikh patients of the respondent Hospital be allowed to wear kirpans of reasonable length while receiving treatment there.

Walbar Machine Products of Canada Ltd. and Obdeyn

Mr. Obdeyn, the complainant, alleged that he was discriminated against by the respondent company because he had helped a fellow employee who had filed a complaint against the respondent. He also alleged he was discriminated against and then discharged on the basis of

his political beliefs. Both allegations were said to be in violation of the Ontario Human Rights Code. Hearings were held December 16, 17, 18, 1980; April 21, 22, 23, and July 2 and 3, 1981.

The case was complex due to the mass of testimony. In an effort to clarify issues, the evidence was divided into four major categories.

The first category dealt with the complainant's allegations of social ostracism and his belief that it was a result of his perceived involvement with another complaint against the respondent company. Testimony by employees and management of Walbar indicated that representatives of management suspected Mr. Obdeyn of involvement in this other matter. The company reasoned that since some employees were aware of this connection, it could be assumed most were.

Mr. Obdeyn contended that because of this he was excluded from social events among the employees. He also alleged that unfair restrictions were placed upon him, specifically with respect to the enforcement of the rules against talking during working hours. From the testimony, the board concluded that management had made no effort to isolate Mr. Obdeyn because of his having assisted his co-worker in a human rights complaint. It was noted that the complainant was not particularly popular with his fellow employees at the best of times.

However, the company's failure to address Mr. Obdeyn's concerns despite its knowledge of rumours concerning the complainant, led to the conclusion by the board that Mr. Obdeyn had been discriminated against because of his having assisted the co-worker.

Mr. Obdeyn's allegation that he was being called a communist took on special meaning in view of the strong feeling of hatred against communists felt by many of his fellow employees. However, although the complainant was subjected to a certain amount of verbal abuse from non-managerial employees, there was no evidence that such manifestations of discrimination were fostered in any way by management, in the view of the board.

The complainant's allegation that he was blamed for a change in overtime policy found evidentiary support. The board concluded that although management knew that Mr. Obdeyn had nothing to do with the change in policy, nothing was done to so inform those employees who blamed Mr. Obdeyn for the change.

The second category of evidence dealt with Mr. Obdeyn's allegations of monetary discrimination with respect to overtime pay. The board found that this contention had little support owing to

evidence of his rather limited level of skill.

The third area dealt with the complainant's allegations of general harassment. Again the board found there was not sufficient evidence to support this allegation.

Finally there was the issue of whether the complainant had been dismissed for just cause. It was noted by the board that Mr. Obdeyn's attendance record was poor, and that the company never received notification of the complainant's illness. In these circumstances the board could find no evidence of discrimination in the dismissal of Mr. Obdeyn.

When considering the whole body of evidence, the board could see no support for the complainant's allegations with respect to discrimination by the management of the respondent, with the exception of the actions of one official who, it was felt, discriminated against Mr. Obdeyn on two occasions. The board found that Mr. Obdeyn had been discriminated against because he had assisted a co-worker in a complaint under the Code.

Finally, the board ordered the following:

- that the respondent post Ontario Human Rights Codes in prominent places within its premises;
- that the respondent send a letter of apology to the complainant for the failure to abide by the Code in its treatment of the complainant. This is because the respondent company is responsible for acts of members of its management who engage in forms of prohibited discrimination;
- that the respondent pay the complainant \$200 in compensation for insult to his dignity.

Taylor, also known as Taillifer (Ottawa) and Fong

Mr. Fong, a Canadian immigrant from Hong Kong, alleged that he was refused housing by Ms. Taylor because of his ancestry, in violation of the Ontario Human Rights Code. A hearing was held May 21, 1981.

Mr. Fong, at the time a student of the University of Ottawa, testified that having searched through the listings of the University housing service, he called the premises of the respondent and spoke to a woman who, from the conversation, appeared to be the owner. He was asked whether he was Chinese, and when he stated that he was and so too was the person with whom he wished to share the premises, he was told "We have never had Chinese and we won't." and "if I take you everyone would move out."

Evidence was presented which established the fact that there was a vacancy at Ms. Taylor's premises at the time Mr. Fong called. The board declared that the respondent was unco-operative during the investigation of the complaint and found that Mr. Fong's evidence was consistent and reliable. In conclusion, there was little doubt that the respondent, Ms. Taylor, discriminated against Mr. Fong with respect to his ancestry, in the view of the board.

The following was therefore ordered:

- that the respondent pay the complainant \$150 in compensation for insult to his dignity;
- that the respondent forward a letter of apology to the complainant with a copy to the Ontario Human Rights Commission;
- that the respondent file a letter with the University of Ottawa housing service stating that she will abide by the terms of the Ontario Human Rights Code.

Greenbrook Manor Ltd. and Kostiauk and Jeffers

Mrs. Jeffers, who is a black Canadian woman, alleged that Mr. Kostiauk, superintendent of Greenbrook Manor discriminated against her on the basis of race and colour in violation of the Ontario Human Rights Code. A hearing was held to determine the substance of this allegation.

The evidence was considered in respect to two issues.

The first, the allegation of a pattern of harassment of Mr. & Mrs. Jeffers, was illustrated by a series of incidents. Evidence revealed an ongoing disagreement between the Jefferses and the Kostiauks. Of the various incidents cited all but one could be attributed to hostility on the part of both parties rather than to discrimination on the basis of colour. In this one instance, the board found credible the testimony of one witness who testified that Mr. Kostiauk denied the children of the respondent's building the use of the sprinkler because "they're black." This witness testified that on several occasions both Mr. and Mrs. Kostiauk told black children that they could not play in the same area.

The second issue related to the allegation of a plan to eliminate all black tenants from the apartments. Testimony of two witnesses indicated that Mr. Kostiauk "was trying to get all the blacks out of the building" and one witness, who was working for Mr. Kostiauk for a period, stated he had instructed her not to rent to black people. There was therefore evidence of intent to deny occupancy but no evidence of actual denial. However, the board concluded that the departure of the Jefferses as tenants constituted a

denial of occupancy. There seemed little doubt in the board's view that Mr. Kostiauk's expression of his intention to Mrs. Jeffers as well as other tenants must have been significant cause for their departure.

Mitigating circumstances, including the long-standing dispute between the parties, affected the decision of whether to award damages. And, although there was no evidence to suggest that the officers of Greenbrook Manor Ltd. were privy to Mr. Kostiauk's policies, they, as respondent company, must assume responsibility for the acts of its agents.

Therefore the order was as follows;

- that the respondent, Greenbrook Manor Ltd., post conspicuously copies of the Ontario Human Rights Code in each of its apartment buildings;
- that the respondent, in consultation with the Commission, establish a system of processing rental applications which will minimize potential for discrimination;
- that the respondent provide the Commission with sufficient access to its rental records to permit the Commission to monitor its rental practices for a period of one year.

Traveller Inn (Sudbury) Ltd. and Mitchell

The complainant, Ms. Mitchell, alleged that she was discriminated against with respect to employment on the basis of sex by the president and manager of the Traveller Inn. It is Ms. Mitchell's allegation that she was asked to submit to sexual advances by him as a condition of employment and was denied employment when she refused, in violation of the Ontario Human Rights Code. Because the case could not be settled in conciliation, a board of inquiry was held.

The dispute in the case revolved around whether the alleged sexual harassment did occur. The testimony of the complainant and of the respondent was at variance. Ms. Mitchell's testimony indicated that, having previously made application for employment, she received a call asking her to report for work as a waitress at 8:00 the following morning. When she arrived she asked the respondent what she should do since there were no customers in the coffee shop at that hour. According to the complainant's testimony he asked her to go into the back room, a request she interpreted as having a sexual connotation. When she declined she was advised that if she did not comply she would not have a job. The respondent was also alleged to have offered to drive Ms. Mitchell home, suggesting it might be fun. The complainant insisted on going home by taxi.

The respondent's version of the events varied dramatically with the complainant's. However Ms. Mitchell's testimony received corroboration from a police constable she had contacted to report the incident.

The respondent's testimony tried to undermine the complainant's credibility. In all cases he was found by the board to be an unreliable witness, and in one case he appeared to have seriously falsified the evidence. As well, the complainant's allegations were supported by testimony from three former employees who indicated that the respondent had made sexual advances towards them.

The board concluded that the complainant was subjected to sexual harassment, and found that willingness to accept these advances was made a condition of her employment, in violation of the Ontario Human Rights Code.

Since the president no longer worked at the Traveller Inn at the time of the hearing, the board found it unnecessary for the company to submit to a monitoring of its hiring practices. However the following orders were made:

- that the respondent pay the complainant \$108 (\$8 for the taxi, \$100 for injured feelings);
- that the respondent post in a conspicuous place in its reception area a placard supplied by the Ontario Human Rights Commission setting out the principles of the Ontario Human Rights Code.

Sklavos Printing and Coutroubis, Kekatos

The complaints arose from separate but related incidents, both falling into the category of sexual harassment, and both resulting in the complainants being forced to seek other employment. A hearing was held January 16, 1981.

The testimony of Ms. Coutroubis stated that when she was working late at Sklavos Printing, the respondent, Bill Sklavos put his arms about her and against her struggles succeeded in kissing her. Her screams made him stop and as she left he asked her not to tell anyone, stating he would not do it again.

When Ms. Coutroubis arrived home her mother knew something was wrong and the complainant told her what happened.

Four days later, Ms. Coutroubis and Ms. Kekatos were working together for the first time since Ms. Coutroubis' alleged harassment. In conversation it became apparent that Ms. Kekatos had been subjected to a more forceful attack. Encouraged by the mutual support, the two women decided to leave immediately and seek other employment.

The testimony of the respondent was found simply not credible by the board. He basically took the position that he did not remember exactly what had happened, but did not believe that anything sexual had happened, nor that he had done anything wrong. By comparison the testimony of both complainants was found to be forthright and credible. As a consequence, the board found that there had been clear violations of the Ontario Human Rights Code by the respondent in relation to both complainants. Commission counsel sought an order compensating both employees for the difference between the amount they would have earned had they remained at Sklavos Printing and their actual earnings, as well as compensation for insult to their dignity. The board ordered the following:

- that the respondent pay Ms. Coutroubis \$1,335 compensation for lost earnings and \$750 for personal damages;
- that the respondent pay Ms. Kekatos \$3,650 compensation for lost earnings and \$750 for personal damages.

TIW Industries Ltd. and Oue

The complainant, Ms. Oue, after working for a probationary period at the position of experienced pressure welder at the respondent company, was dismissed. It was her allegation that she was terminated after this probationary period because of her sex in violation of the Ontario Human Rights Code.

The crux of the case was the demanding nature of "pressure vessel welding" which quite simply describes the welding of vessels which will be used to contain substances under a high degree of pressure. It is an exacting skill, one which the complainant claimed to possess when she applied to the respondent. Her claim was substantiated by her identification card from the Ministry of Consumer and Corporate Affairs which serves as a record of the successful testing of a welder's performance. The complainant passed such a test while at George Brown College and again at a previous employer, although her actual work there did not involve welding.

Ms. Oue was the first woman to apply to the respondent as a welder since the Second World War. However, she successfully completed her interviews, her test and was hired as a probationary employee. Testimony from her supervisors and foremen indicated that there was a high level of enthusiasm for her prospects.

Evidence revealed that the complainant began welding in the Small Parts Department, a standard starting position. Here her structural welding was rated "fair" to "good" but her

pressure vessel welding was entirely inadequate. Since she was hired as an experienced pressure vessel welder, her performance in this exacting procedure was of great importance. It is worth noting that the specific tests that she had passed are only threshold qualifications which may not indicate how well a welder will conform to the typical pressures, including time considerations, on the shop floor.

In subsequent opportunities to use her skills as a pressure vessel welder, the complainant again produced inadequate welds, some of which had to be completely redone. Shortly after that the decision was made to dismiss the complainant.

In view of all the evidence, the board concluded that the complainant had been hired to perform a specific job and that her hiring had been accepted with some enthusiasm by the respondent. The fact remained that she consistently demonstrated an inability to perform this job to the standard required. The board found that the respondent acted properly and according to normal practices and standards previously applied to male employees. Therefore, the case was dismissed.

Activities of the Race Relations Division 1981-82

The Race Relations Division of the Ontario Human Rights Commission, with its primary function of reducing and preventing racial tensions and conflicts, was active over the past fiscal year on many fronts, both at the community and institutional levels.

In the area of neighbourhood and community relations, the Division was active mediating numerous racial and ethnic conflict situations that arose from time to time throughout the province, and endeavouring to develop the appropriate structures necessary to prevent their re-occurrence.

Because racism exists in all sectors of Ontario society, its elimination will only be brought about through the leadership and assistance from community organizations, and key agencies and institutions who shape and mould the province's mosaic. The Division applied its resources to facilitate the development and strengthening of racism-remedying mechanisms within these sectors in order to prevent the development of racial and ethnic tensions in such areas as the workplace, schools, and neighbourhoods as well as within and amongst minority groups and their interaction with agencies and institutions in the society.

Cabinet Committee on Race Relations

The Division continued its on-going working relationship with the Cabinet Committee on Race Relations, by working closely with its Staff Working Group on a number of projects. The Division's contribution included providing needed research-related and other professional support to the Cabinet Committee, especially in the areas of youth employment, equal employment opportunity, housing and government advertising.

To assist policy and program development and to ensure that government advertisements reflect the racial diversity of Ontario, the Committee, which is chaired by the Attorney-General, the Honourable R. Roy McMurtry, established a Task Force on Racial Diversity in Government Advertising. The Race Relations Division is represented on this Task Force.

Through its participation in the Housing Sub-Committee of the Staff Working Group, the Race Relations Division is assisting the Ministry of Housing and Municipal Affairs, through its agency the Metropolitan Toronto Housing Authority, to develop race relations policies and programs to improve the race relations climate



in that sector.

Youth Employment

Youth employment—a problem of great concern to all levels of government—has a significant impact on the race relations climate. It is particularly an issue of concern to the visible minority community, whose youth tend to suffer the impact of unemployment to a greater degree.

In the past year, to help alleviate this situation, the Division launched a pilot project with the assistance of community and business groups in downtown Toronto to enable a racially mixed selected group of 30 youth obtain first time summer work in their local community and develop work-related employment skills and work-readiness training for use in the future.

The success of the youth summer project in 1981-82 led to an expansion in the program for the summer of 1982—again with the assistance and co-operation of local community and business groups, the Ontario Youth Secretariat, and the Ontario Manpower Commission. In addition to the downtown inner-city program, the project has been expanded to include the City of North York and widened to provide summer employment for over 100 youths.

Educational Institutions

A critical starting point in the effort to combat prejudice and discrimination in any society is through educational institutions. Therefore, the Division has worked hand in hand with the Ministry of Education as well as the various Boards of Education throughout the province to develop appropriate race relations responses and policies.

The Division continued to respond to and monitor the re-emergence of the Ku Klux Klan and its periodic attempts to recruit members from the high schools and the community. Earlier in 1981, the Ku Klux Klan conducted a recruitment drive in certain centres, using three basic strategies: the recruitment of members amongst high school students, advocacy through electronic media forums, and distribution of literature.

The Division sought to combat such tactics by establishing lines of communication with the various school boards. One particular school incident, where a prominent member of the KKK was invited to address a class of high school students, led the Commission and community groups to express their strong disapproval. In response, the North York Board of Education exercised leadership through the development of a policy statement condemning the Ku Klux Klan, and the Board took steps to insure that such an incident will not be repeated. The Race Relations Division provided input to the wide-ranging policy paper on race relations prepared by the North York Board of Education

by suggesting specific issues and concerns it might consider pursuing in order to improve the race relations climate therein. The Race Relations Division also initiated contact with the Metropolitan Toronto Police in order to better monitor the activities of the Ku Klux Klan and other related white supremacist groups.

A major initiative was taken to address the whole issue of race relations initiatives in schools when the Division sponsored in February 1982 a two-day conference entitled "Race Relations ... New Perspectives, New Delivery Systems for Education" in Metropolitan Toronto and environs for race relations practitioners working in the educational area. Issues discussed in the five small-group workshops included the assessment and streaming of students, curriculum, development of programs for students and teachers, school-community relations, and policy development and implementation as they affect race relations.

Business and Industry and Labour

In a continuing effort to heighten the awareness of business and industry in the development of race relations policies and programs in the workplace, the Division is preparing an educational assistance package for employers. This preventative, training and awareness package is intended to aid the employer to establish an on-going system for the prevention of racial discrimination in the workplace.

The package will address, in "building block" style, the issues of prejudice and discrimination as they affect recruitment (including aptitude tests, application forms, interviews, and the role of employment agencies); probation and training, the working environment, and promotion, discipline, grievance and dismissal.

The Division also participated in the Conference Planning Committee of the Social Planning Council of Metropolitan Toronto, which was responsible for the organization of a major conference entitled "Racial and Ethnic Minorities in the Workplace." The conference brought representatives of business, labour and the minority community together so that they might solve common problems in race and ethnic relations.

The Ontario Federation of Labour launched its race relations campaign entitled "Racism Hurts Everyone" in the Fall of 1981. Exercising leadership in this area, the OFL program focused upon a media education and poster campaign supplemented by the hosting of regional community seminars with the assistance of their local district labour councils. The Division has been assisting the OFL and the local district labour councils in their program planning and the Division staff has participated as both resource persons and speakers at these sessions.

The forums, which have been well received in the various communities, have generated appreciable awareness of the race relations issues and should provide the stimulus for further educational initiatives at the community level.

The Criminal Justice System

Two major areas of focus, police-minority relations and police training in race relations, dominated the Division's activity in the past year. In Kenora, the Division worked to improve relations between Native people and the authorities and to reduce the potential for racial conflict. In addition, the Northern Regional staff of the Division are examining ways and means of improving the police-Native relations climate through an assessment of existing programs in order to identify program gaps and strengthen Division, agency and community response in this area.

More broadly, however, the Division continued to develop new initiatives in police-community relations, to help deliver training and sensitization programs and to strengthen the understanding of potential race problems among police officials through education. The Commissioner for Race Relations attended many seminars, meetings, and workshops on police-community relations and met with officials at various police institutions, including the Chiefs of Police. In October, 1981, he attended an international conference held in Toronto on "Police-Community Relations: The Community's Responsibility," organized by the Foundation for Police/Community Relations and the Canadian Council of Christians and Jews. Also, the Division continued to conduct numerous police training sessions for various police forces throughout the province.

For a long time, the Race Relations Division had felt the need for having a uniform race relations training course for members of the police forces in Ontario. Therefore, a working committee was established between the Ontario Police Commission and the Race Relations Division to explore this possibility.

Accordingly, in February 1982, the Division co-sponsored with the Ontario Police Commission a police training workshop at the Ontario Police College in Aylmer. Representatives from various police forces attended. Participants examined the workshop package prepared by the Division, summarizing and analyzing the police training programs of many jurisdictions within and outside Canada, including the United States, Britain, Australia, New Zealand, and the Netherlands. The workshops attempted to reach agreement among the participants about the course content of the race relations syllabus

adopted by Ontario police forces. Also discussed were various methods of delivery and the resources available to implement the program.

As a follow-up to the Aylmer meeting, a committee of police representatives from fifteen police forces in the province, the OPC and the Commission was set up to deal with the production of new race relations training resource material for the police. This need was identified during the workshop review of various race relations course content. The Race Relations Division will be providing whatever assistance it can give to the committee, and will continue to work in the coming year to further strengthen formal and informal liaison between police and minority groups.

The Media

The Division is aware that statements or viewpoints expressed by certain members of the minority group community have at times been generalized as the viewpoint of the whole community and have at times had a negative impact on race relations. Accordingly, the Division sought to assist the media to broaden their contacts with the various ethnic communities. There was also a need for a greater number of community organizations to take advantage of media coverage to highlight their activities and programs.

It was on the basis of these considerations that the Division undertook a joint project with the Urban Alliance on Race Relations, who suggested the production of two handbooks. One, the "Guide to Race Relations Organizations in Metro Toronto," is designed to acquaint the print and broadcast media with the various Metro and area organizations involved in the area of race relations. The second, the "Guide to the Use of the Media," is intended for use by community organizations to identify appropriate media contacts. It also gives information on how best to utilize the available media. These handbooks were launched at a reception in Toronto, in March 1982, attended by about 150 media and community representatives, including members of the Commission and the Urban Alliance.

Municipal Governments and Race Relations

In view of the importance which the Race Relations Division attaches to the role of municipalities in race relations, the Commissioner and Division staff have been assisting various municipal Mayor's Committees to improve the race relations climate in their areas. Such groups as the North York Mayor's Committee on Community, Race and Ethnic Relations and the City of Toronto Race Relations Committee have had a continuing and close working relationship with the Division.

Key issues currently being tackled by these committees include improving the racial climate in various neighbourhoods in the municipality, development of summer employment programs to counteract the negative effects of youth unemployment on the race relations climate and stimulating in-house equal employment opportunity programs and policies. The Division provides assistance to the communities in their various projects.

As well, the Division has recently been working with the East York Mayor's Committee on Multiculturalism and Race Relations to develop terms of reference which will enable it to become more active in the race relations area.

Religious Institutions

The Race Relations Division has in the past year sought the assistance of religious institutions to promote racial harmony. In January, 1981, an Ecumenical service, co-sponsored by the Consultative Committee of Religious Leaders on Race Relations and the Race Relations Division, with the theme "One in Spirit: A Celebration of Our Humanity," was held at Our Lady of Lourdes Church in Toronto. This was followed by a second service in May at St. Stephen's Anglican Church in Downsview.

Representatives included members of the Moslem, Hindu and Christian faiths. Keynote speakers included the Honourable Robert Elgie, then Minister of Labour, the Attorney-General, the Honourable R. Roy McMurtry, and the Commissioner for Race Relations.

Social Services and Health Care Delivery

The Race Relations Division continued to assist hospitals, clinics and agencies to provide services and develop policies and programs to meet the needs of the multi-racial and multi-ethnic communities in Ontario. Several staff training sessions in race relations were conducted for senior citizens' care institutions in the Eastern region in response to concerns raised regarding staff and staff-patient relations. Also, the Division provided its consultative services on an on-going basis to various social planning councils and inter-agency councils in a continuing effort to develop appropriate responses to race relations problems.

Neighbourhood Relations and Housing

The Division's mandate involves community outreach activities in the area of race relations. In Metropolitan Toronto, this activity is carried out mainly through its newly established Community Relations Team. Members of this Team assisted to solve and ease a wide variety of potentially troublesome situations in Metropolitan Toronto and surrounding areas.

During the fiscal year, the Community Relations Team continued to monitor the race relations climate at both the community and neighbourhood levels.

The Commissioner for Race Relations visited and held meetings with housing officials, tenant organizations and service agencies in especially troubled neighbourhoods where community agencies and groups have articulated race relations concerns. The Division, through the Staff Working Groups of the Cabinet Committee on Race Relations, developed appropriate remedial programs and strategies.

The Division, through its Community Relations Team, convened a major consultation with the staff of the Metropolitan Toronto Housing Authority (MTHA) with the aim of establishing links with that agency in order to share information on racial conflicts and tensions which might arise within MTHA projects or units. The Division continued to work co-operatively to improve the race relations climate within the projects or units.

The CRT worked in many other areas. When in September of 1981 reports were received about incidents of racial harassment in Peterborough involving Black Nigerian students attending Sir Sanford Fleming College, a member of the Team was sent from Toronto to investigate and help mediate the conflict. Initial investigations revealed that these harassments had been escalating and that the Nigerian students were now fearful of travelling in the city, particularly after dark. Concern over this problem generated a great deal of media publicity and a strong positive community response.

Soon after, a Committee made up of institutional representatives and concerned citizens was formed under the auspices of the Mayor. The mandate of the Committee was to look into the problem of race relations in Peterborough and to make appropriate recommendations. The Division works closely with the committee in its effort to foster a harmonious race relations climate in that community: it also provides ongoing advice to other institutions and organizations involved.

Because of the wide publicity given to the Peterborough event, other agencies and organizations outside of Peterborough became interested in what the Division was doing about that situation. One such organization was the Organization of Nigerians in Canada (Toronto chapter). The Commissioner, therefore, held a meeting in Toronto with one of the officials, and later still, in March, 1982, a meeting was held in the community with members of the Nigerian organization to explain the Division's initiatives with respect to the Peterborough situation.

Disputes over leadership of the Shromani Sikh temple on Toronto's Pape Avenue led to the shooting death of two men in an Osgoode Hall courtroom on March 18, 1982. The potential for the escalation of violence and tension existed as well as the possibility of a backlash among non-Sikh communities. The Commissioner, to help diffuse the tension both within and outside the Sikh community, first met with a number of Sikh leaders and police representatives to discuss the situation, and later a more formal meeting was held with members of the Sikh Community. Here, Dr. Ubale received a joint statement of concern, co-operation, and condemnation of violence from that community about the tragedy which occurred in the courtroom on March 18.

In Windsor, Ontario, three Vietnamese men were assaulted in a convenience store parking lot. The assailants treated the Vietnamese first to racial slurs, and then to physical violence and damage of a car owned by the Vietnamese. Subsequent police investigation led to the arrest and conviction of the assailants. The Division facilitated a meeting with community representatives, the police, and the Vietnamese and Chinese communities to solicit support in dealing with further racial conflict. The meeting also served to diminish hostilities which had developed from the incident.

Community Outreach

The Race Relations Commissioners have implemented a strategy of holding, from time to time, their monthly Race Relations Division meeting in the community, with specific community groups or organizations as participants. This is one way to learn about community problems first hand and to establish reliable networks of community leaders who can be depended upon in times of crisis. Groups the Commissioners met during the fiscal year included the Canadian-Caribbean Excelsior Association (York Borough) and the Tropicana Association (Scarborough). The Division is co-sponsoring a conference with Tropicana in the summer to discuss the problems and needs of minority youth. At the crucial stage of the implementation of these activities, the Division lost one of its Commissioners, Jane Pepino, to the Police Commission. We have profited from Commissioner Pepino's contribution to the Race Relations Division, and wish her every success in her new role as Police Commissioner.

The Commissioner for Race Relations was much in demand as a speaker over the past year. He spoke at seminars, conferences and to community groups. The highlights include addresses to the Oakville and District Personnel Association, the Social Planning Council of Metropolitan Toronto, the C.A.S.H.R.A. Conference in Windsor, and York University. He has also been interviewed by the media on a variety of issues.

The Commissioner and Division officials visited numerous communities to offer the Division's educational and consultative services. The Commissioner met with officials and groups in Kenora, Kitchener-Waterloo, Ottawa, Sudbury and Sarnia to discuss the problems facing the South East Asian, Chinese and Korean communities.

The Commissioner has also been widening contacts outside of Ontario and Canada - especially useful in an era when race relations has become internationalized. He spoke on the administrative structure of race relations to an academic conference in Saskatoon; he visited the International Association of Official Human Rights Agencies Conference in Dayton, Ohio; and met with human rights officials in Washington.

Information sharing between jurisdictions is essential to work in the field of race relations today. The Division has taken advantage of experiences and skills developed elsewhere and has adapted them to meet its own needs.

Research and Library Resources

Given the dynamic nature of race relations, the Division is aware of the vital role of research in its work. The development of an in-house research capacity has enabled the provision of policy-related research support to the Commissioner for Race Relations and to the Division's initiatives generally. It has also served to help meet the constant demand for evaluative and interpretative reports, position papers, proposals and documentation for the attention of officials and the public within Ontario as well as the review and evaluation of research reports and development in other jurisdictions.

Central to the work of the Division today is the newly produced strategy document of the Division which was launched in May, 1982.

Research projects currently under way include pilot studies of the experience of selected visible minority business proprietors in Metropolitan Toronto, and of the career paths of recent visible minority MBA graduates from Canadian universities. The racial dimension is crucial to the aims of both research papers.

Finally, to aid race relations research, both within and outside the Division, the Division has invested a sizeable amount of money in the Ministry of Labour library to enable it to purchase books, current periodicals and other needed publications in the area of race relations. We anticipate that before long, the Labour library will be among the foremost race relations and human rights libraries in Canada.



Ontario Human Rights Commission Staff 1981-82

Toronto

Arnot, Perry
Armstrong, Jill
Bernhardt, Kim
Brown, George A.
Burpee, Joyce
Caffrey, Colm
Calderone, Tina
Chaffin, Elsa
Chapman, Shirley
Ching, Vincent
Crean, Fiona
Della Vella, Rick
Dewe, David
Feldman, Alice
Gaspar, Fern
Goldrick, Penny
Goulopoulos, Frances
Grier, Paulette
Grima, Peter
Gulamhussein, Zarina
Herman, Thea
Holt, Silvlyn
Hurley, Helen
Jim, Serena
Johnson, Beverley
Jones, Howard
Kaczmarski, Joan
Kerna, Gloria
Laporte, Robbi
Marcuz, Vic
McKenzie, Wesley
McGregor, Sharon
Mears, Laurie
Nebout, Margaret
Palacio, Roger
Ramanujam, Sita
Reynolds, Jessica
Ruiter, Fred
Shaw, Marian
Simon, Michael
Singh, Vidja
Stratton, Jim
Svegzda, Laima
Taylor, Sandra
Wilson, Kim
Wood, Glenda

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Legault, Theresa
Polley, Joe
Richard, Maurice

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Galinis, Ruth
Jackson, William
Lapalme, Gilles
Mitchell, Irene
St. Onge, Jo-Anne
Welch, Dan

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Barnes, Dorothy
Burns, Walter
Carrick, Anne
Dahlin, Anita
Lawrence, Greg
Marino, Len

Race Relations

Allen, Margaret
Charles, Joyce
Chiappa, Anna
Chopra, Raj
D'Ignazio, Dan
Fraser, Kathleen
Gill, Surinder
Guttentag, Gail
Morrison, Glen
Nakamura, Mark
Stern, Doris
Sui, Bobby
Whist, Eric
Wilson, Robert
Witter, Merv
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(613) 547-3414

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N2G 1G1
(519) 744-8101

London

205 Oxford St. E.
N6A 5G6
(519) 439-3231

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(613) 523-7530

Sault Ste. Marie

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St. Catharines

205 King St.
L2R 3J5
(416) 682-7261

Sudbury

199 Larch St.
P3E 5P9
(705) 675-4455

Thunder Bay

435 James St. S.
P7E 6E3
(807) 475-1693

Timmins

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2500 Lawrence Ave. East
M1P 2R7
(416) 750-3575

Windsor

500 Ouellette Ave.
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(519) 256-8278

Table 1:

Disposition of Closed Formal Cases:

Disposition	1980-81		1981-82	
	Number	Percent	Number	Percent
Settled	459	51	581	58%
Dismissed	337	38	321	32%
Withdrawn	97	11	98	10%
Total	893	100	1,000	100%

Informal Cases Completed 350 308

Table 2(a):**Settlements Obtained in Formal Complaints: 1981-82**

Settlement Category	Employment	Housing	Public Accommodation Services and Facilities	Other	Total
Compensation	\$426,084 for 187 Complainants	\$765 for 5 Complainants	\$2,149 for 9 Complainants	\$27,924 for 5 Complainants	\$456,922 for 206 Complainants
Offer of Present or Future Job or Facility	65	13	14	3	95
Affirmative Action	12	-	2	2	16
Consultations and Review of Practices*	964	46	62	58	1,130*

* This figure represents the total of all proactive activities, such as human rights seminars, revision of management policies, and review of advertising, application forms and leases.

Table 2(b):**Settlements Obtained in Formal Complaints: 1980-81**

Settlement Category	Employment	Housing	Public Accommodation Services and Facilities	Other	Total
Compensation	\$176,400 for 111 Complainants	\$5,109 for 6 Complainants	\$3,000 for 2 Complainants	\$8,288 for 5 Complainants	\$192,797 for 124 Complainants
Offer of Present or Future Job or Facility	73	17	9	5	104
Affirmative Action	22	-	-	1	23
Consultations and Review of Practices	767	40	45	37	889

Table 3:

Inquiries, Referrals, Advertising and Application Form Review

	1981-82	1980-81
Inquiries	22,746	19,637
Referrals	5,059	5,318
Advertising Review	158	184
Application Form Review	538	515
Total	28,501	25,654

Table 4:

Formal Cases according to Grounds and Social Areas: 1981-82

Social Area	Grounds						Filed on Behalf of Another Person	Total	Percentage
	Race Colour	Nationality Ancestry	Sex, Marital Status	Creed	Age				
Employment	328	64	327	29	77	1	1	826	83%
Housing	35	14	5	—	—	—	—	54	5%
Public Accommodation, Services and Facilities	30	10	27	2	—	—	—	69	7%
Reprisals	17	1	7	1	2	—	—	28	3%
Signs and Notices	5	—	—	1	—	—	—	6	—
Filed on Behalf of Another Person	6	3	6	2	—	—	—	17	2%
Total	421	92	372	35	79	1	1,000	100%	
Percentage	42%	9%	37%	4%	8%	—	—	100%	

Table 5:

Formal Cases according to Grounds and Social Areas: 1980-81

Social Area	Grounds						Filed on Behalf of Another Person	Total	Percentage
	Race Colour	Nationality Ancestry	Sex, Marital Status	Creed	Age				
Employment	305	58	281	31	71	1	747	84%	
Housing	46	2	1	2	-	-	51	6%	
Public Accommodation, Services and Facilities	33	6	9	2	-	1	51	6%	
Reprisals	10	4	3	-	1	4	22	2%	
Signs and Notices	-	-	-	-	-	-	-	-	-
Filed on Behalf of Another Person	9	1	8	1	1	2	22	2%	
Total	403	71	302	36	73	8	893		
Percentage	45%	8% -	34%	4%	8%	1			100%

Table 6:

Boards of Inquiry

	1981-82	1980-81
Hearings Appointed	43*	57
Hearings Completed	42**	15
Findings for Complainant	38	7
Findings for Respondent	8	7
Complaints Withdrawn	2	-
Under Appeal	1	1

*These hearings involved a total of 61 complainants.

**These hearings involved a total of 49 complainants.

Table 7:

Race Relations

	1981-82	1980-81
Mediations	183	149
Major Projects	63	34
Consultations	297	92
Public Education:		
Major Projects	37	38
Activities	1,848	1,687

Table 8:

Race Relations according to Sector

Sector	1981-82		1980-81	
	Mediations	Consultations	Mediations	Consultations
Neighbourhood Relations	62	10	46	2
Community Services and Facilities	15	7	19	-
Criminal Justice System	50	15	49	4
Educational Institutions	21	49	9	19
The Workplace	8	10	2	4
Unions	-	4	-	1
Media	11	3	12	3
Health and Social Services	1	12	1	3
Community Organizations	8	107	6	36
Religious Institutions	-	11	1	3
Governments	3	44	3	12
Community at Large	4	14	1	5
Total	183	286	149	92

People Who Have Served the Commission

Ministers of Labour

William K. Warrender
H. Leslie Rowntree
Dalton Bales
Gordon Carton
Fern Guindon
John P. MacBeth
Bette Stephenson
Robert G. Elgie
Russell H. Ramsay

Chairmen

Dr. Louis Fine
Dr. Daniel G. Hill
Dr. Thomas H.B. Symons
Dorothea Crittenden
Canon Borden Purcell

Vice-Chairman

Rabbi W. Gunther Plaut

Commissioners

Thomas M. Eberlee
Joyce Applebaum
Gordon Greenaway
J.F. Nutland
Ethel McLellan
Walter Currie
Rosalie Abella
Bromley Armstrong
Rev. N. Bruce McLeod
Valerie Kasurak
Lita-Rose Betcherman
M. Jean-Marie Bordeleau
Mrs. Elsie Chilton
Brian Denis Giroux
Peter Cicchi
Marie Marchand
Dr. Albin Jousse
Beverley Salmon
Andrew Rickard
N. Jane Pepino
Dr. Harry Parrott

Race Relations Commissioner

Dr. Bhausaheb Ubale

Executive Director

George A. Brown

Directors

Robert W. McPhee
Naison K. Mawande
Jim Stratton

Assistant Director

Herbert A. Sohn

Manager, Program Review and Design

Jill Armstrong

Manager, Race Relations

Mark Nakamura

Executive Officers

Tom McMillan
Howard Jones

CA 24N
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- A56

THE ONTARIO HUMAN RIGHTS CODE

Whereas recognition of the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world and is in accord with the Universal Declaration of Human Rights as proclaimed by the United Nations;

And Whereas it is public policy in Ontario to recognize the dignity and worth of every person and to provide for equal rights and opportunities without discrimination that is contrary to law, and as its aim the creation of a climate of harmony and mutual respect for the worth and dignity of each person so that each person may live in the community and able to contribute to the common good and well-being of the Province;

As these principles have been confirmed by a number of enactments of the Legislature of Ontario and it is desirable to revise and extend the protection of human rights in Ontario,

Her Majesty, by and with the advice and Legislative Assembly of the Province of Ontario, enacts as follows.



Ontario
Human Rights
Commission

Annual Report
1982-1983

CANADIAN CHARTER OF RIGHTS AND FREEDOMS



United Nations Universal Declaration of Human Rights



ONTARIO HUMAN RIGHTS COMMISSION

ANNUAL REPORT

1982-1983

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June 1983

The Honourable Russell H. Ramsay
Minister of Labour
400 University Avenue
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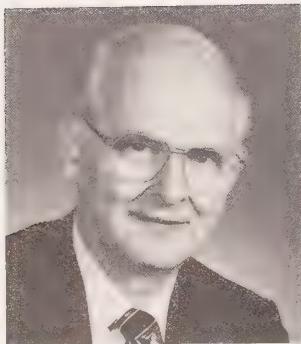
Dear Mr. Ramsay:

Pursuant to Section 30(1) of the Human Rights Code, 1981, it is my pleasure to provide to you the Annual Report of the Ontario Human Rights Commission for the fiscal year 1982-83, for submission to the Legislative Assembly of Ontario.

Yours sincerely,

A handwritten signature in cursive ink, appearing to read "Borden Purcell".

Canon Borden Purcell
Chairman



MINISTER'S MESSAGE

I remain extremely pleased to be associated with the Ontario Human Rights Commission during the many busy months since the proclamation of the Human Rights Code, 1981.

This flagship Code is one of the most progressive in our history. It addresses acts of discrimination never before proclaimed as unacceptable under the law...and it is one of which my predecessors and all people who had the opportunity for input, can be immensely proud.

The wide-scale publicity campaign directed to all Ontarians, as well as a large commitment from the Ontario Human Rights Commission and the staff of the Ministry of Labour, have served to further develop a spirit of cooperation among the many and varied peoples who share this wonderful province.

Yours sincerely,

A handwritten signature in cursive script, appearing to read "R. H. Ramsay".

Russell H. Ramsay
Minister

CHAIRMAN'S REMARKS

I am pleased to submit this annual report on the first anniversary of the new Human Rights Code, and a short period of time after my first anniversary as Chairman.

I am grateful for the continuing support of the Minister of Labour, the Honourable Russell H. Ramsay. He has frequently demonstrated his commitment to our purpose during his public appearances and consultations over the past year. On numerous occasions, the Minister has voiced the need for equality of opportunity and positive inter-group relations.

The proclamation of the new Code was the highlight of the 1982-83 fiscal year. The extended grounds and broadened mandate continued Ontario's position of leadership in the field of human rights legislation, and will enable us to respond more effectively to the needs of our changing communities.

An extensive publicity campaign was launched to introduce and explain the provisions of the new Code. The theme, "Together We Are One," was carried through newspaper and radio advertising, posters and a series of pamphlets which outlined and explained various aspects of the Commission's work. The large number of requests for information, publications, audio-visual materials, seminars and guest speakers that resulted from the campaign was a very positive indication of the interest of the community in upholding the letter and spirit of the Human Rights Code.

While it is too early to assess the impact of the new provisions of the Code, there are three areas I would like to comment on.

The first is the protection from discrimination of people with mental or physical handicaps. Within the last fiscal year, 124 allegations of discrimination because of handicap represented 15 per cent of all cases filed. Staff specialists are responsible for providing the regional staff with advice with respect to the investigation and conciliation of complaints, and research and educational activities relating to discrimination on the ground of handicap.

The second is sexual harassment, which is now prohibited and defined by the Code. As well, unwelcome sexual advances made by a person in authority (or threats of reprisal because of rejection thereof) are explicitly prohibited. The Commission has been very successful in obtaining remedies for complainants, and in implementing corrective programs and policies to ensure that the problem does not re-emerge. A number of school boards, universities, colleges and industrial firms have already taken the initiative by instituting policies on and mechanisms for dealing with sexual harassment.

The third is the provision of statutory authority for the Lieutenant Governor in Council to designate at least three members of the Commission to constitute a Race Relations Division of the Commission, and the designation of one of these members as Commissioner for Race Relations. It is the mandate of the Race Relations Division to perform functions of the Commission relating to race, ancestry, place of origin, colour, ethnic origin or creed that are referred to it by the Commission.

A most fortunate aspect of being Chairman of the Ontario Human Rights Commission is the opportunity to work with the highly qualified and dedicated staff. Their knowledge and expertise in dealing with the new provisions have led to

the expeditious conclusion of settlements, and to increased community involvement in human rights activities.

My personal commitment at the assumption of my term of office was to increase awareness of the responsibilities and activities of the Commission by travelling around the province and meeting with various communities, organizations, industries, labour groups and concerned individuals and committees. The overwhelming response and cooperation of members of the community have underscored for me that the Commission cannot achieve its goals without the support and good will of the people of Ontario. Nowhere is this more necessary than in the field of race relations. The Race Relations Division of the Commission, through an intensive program of mediation and education, has been instrumental in securing the support and cooperation of community agencies. We must all work together to speak out against racism and to develop effective programs to combat racial discrimination in all its forms.

This has been an active year for the Commission, and I look forward to working with all of you as we strive towards making our mutual ideals a living reality.

A handwritten signature in black ink, appearing to read "Barbara C. Prentice".

THE COMMISSION



Chairman: Canon Borden C. Purcell

Canon Purcell, a member of the Commission since January 1978, was born in Athens, Ontario and left his position as rector of the largest Anglican parish in Ottawa in order to assume his duties as chairman of the Ontario Human Rights Commission in February 1982. The first clergyman to head such a commission in Ontario, Canon Purcell has planned and convened numerous ecumenical events that include conferences on racism, refugees and other disadvantaged persons. Involved in several international organizations on human rights, the chairman is also on the national council of the Canadian Human Rights Foundation.



Vice-Chairman: Rabbi W. Gunther Plaut

Rabbi Plaut is a veteran civil libertarian and social commentator. He has been a lawyer, clergyman and author. In December 1978, he was awarded the Order of Canada. In March 1983, he was elected president of the Central Conferences of American Rabbis, the international organization of liberal rabbis. He is the editor of the Commission's newsletter, "Affirmation," and has authored 15 books.



Race Relations Commissioner: Dr. Bhausaheb Ubale

Dr. Ubale was born in India and educated in the United Kingdom. He holds a Ph.D. in economics. He authored a report entitled: "Equal Opportunity and Public Policy: A report on concerns of the South Asian Canadian community regarding their place in the Canadian mosaic." Dr. Ubale was instrumental in developing a police training program on race relations now being given at the Metropolitan Toronto Police College, as well as a number of other training programs for various institutions and agencies.



Race Relations Commissioner: Peter Cicchi

Mr. Cicchi has a long and illustrious history of community and ethnocultural involvement. He has chaired, co-founded and served as a member of municipal and cultural committees, such as the Federal Consultative Council on Multiculturalism, and is the recipient of citations from the Government of Canada, the Government of Ontario and the City of Hamilton, where he resides. He was, as well, honoured by His Holiness Pope John Paul II with the title of Knight Commander of the Order to St. Gregory the Great. Mr. Cicchi, who has been a commissioner since September 1979, has recently been appointed to the Race Relations Division.



Race Relations Commissioner: Beverley Salmon

Mrs. Salmon practiced her profession of public health nursing in northern Ontario, Toronto and Detroit. She has been actively involved in issues pertaining to multiculturalism, racism, education and the status of women, and was founding chairperson of the Black Liaison Committee of the Toronto Board of Education.

Currently she serves on a planning board committee in North York, is a member of the Arbitrators Institute of Canada, and the Toronto Urban Alliance on Race Relations.



Commissioner: Mary Lou Dingle, Q.C.

Mrs. Dingle is an active partner in a Hamilton law firm. She graduated from McMaster University in Hamilton and Osgoode Hall Law School in Toronto, and was called to the Ontario bar with honours in 1964. An active participant in community life, she is a charter member of the Hamilton Elizabeth Fry Society, a former member of the Equal Rights Review and Coordinating Committee for McMaster University, of the Legal Aid Area Committee in Hamilton, and is presently involved in the United Way and the Canadian Club.



Commissioner: Sam Ion

A syndicated columnist and feature writer currently working for The Toronto Sun, Ms. Ion has been a board member of the YMCA-YWCA, Association for Early Childhood Education, Consumers Association of Canada, and the Status of Women's Committee in Hamilton. She was nominated for Hamilton's "Woman of the Year" in 1978, and for the "Vanier Awards" in 1982.



Commissioner: Dr. Albin T. Jousse

Dr. Jousse, a fellow of the Royal College of Physicians and Surgeons of Canada, has published more than 40 papers in his field of rehabilitation medicine. He was both a professor and department head of rehabilitation medicine at the University of Toronto, and medical director of Lyndhurst Lodge Hospital for 30 years. He is a member of many agencies concerned with the physically impaired, including the International Society of Paraplegia and the Canadian Neurological Society.



Commissioner: Marie T. Marchand

Born in Moncton, New Brunswick, Mrs. Marchand studied political science and public administration at the University of Ottawa. She was a candidate for the Nipissing riding in the 1979 and 1980 federal elections. Fluently bilingual, Mrs. Marchand has been extensively involved in many community organizations and is currently manager of the North Bay Downtown Improvement Area.



Commissioner: Dr. Harry Parrott

Dr. Parrott brings a wealth of experience in public life to his new role as commissioner. He has been actively involved in provincial politics and community service groups. He served in the provincial Cabinet from 1975 to 1981, in the portfolios of Colleges and Universities and the Environment. Dr. Parrott has recently resumed his professional dental practice in Woodstock, Ontario, and is also chairman of the Committee on University Education for Northeastern Ontario.



Commissioner: Gene Rheaume

Mr. Rheaume was born in the Peace River area of Alberta and graduated from the Universities of Saskatchewan and British Columbia. He was a member of parliament for the Northwest Territories from 1963 to 1965. Mr. Rheaume is currently self-employed as a consultant on Native affairs. He was formerly the national chairman of the Native Housing Task Force and is a honorary life member of five Metis, Indian and non-status Indian associations.



Commissioner: Dr. Leonidas Polymenakos

Dr. Polymenakos' role as a commissioner was tragically brief, having been appointed to the Commission in May 1982, until his death in July of the same year.

Dr. Polymenakos was born in Sparta, Greece and graduated in medicine from the University of Athens in 1931. After distinguished war service in Greece during World War II he came to Canada in 1945 as director of the Greek War Relief Commission for North America, and eventually set up a medical practice in Toronto. He was appointed honorary vice-consul for Greece in Toronto in 1961 and was largely responsible for the construction of the Hellenic Cultural Centre and San Dimitrios Greek Orthodox Church. Dr. Polymenakos was elected president of the Greek Community of Metro Toronto in 1971, also served on the Ontario Advisory Council on Multiculturalism and was a member of the Canadian Consultative Council on Multiculturalism until his death. On July 1, 1982, he was awarded the Order of Canada as a tribute to his rich and varied contribution to Canadian life.

ROLE AND ACTIVITIES OF THE COMMISSION

1982-83

The aim of Ontario's Human Rights Code is to create, at the community level, a climate of understanding and mutual respect for the dignity and worth of each person, so that each person feels a part of the community and able to contribute fully to the development and well-being of the community and the province.

This statement expresses the public policy of Ontario and draws its inspiration from the United Nation's Declaration of Human Rights which was proclaimed in 1948. The Declaration serves as an inspirational document, but more importantly, it represents a commitment to the promotion of universal social harmony.

The statutory functions of the Ontario Human Rights Commission are:

- to forward the policy that the dignity and worth of every person be recognized and that equal rights and opportunities be provided without discrimination that is contrary to law;
- to promote an understanding and acceptance of and compliance with the Human Rights Code;
- to recommend for consideration special programs designed to relieve hardship or economic disadvantage, or to assist disadvantaged persons or groups to achieve equal opportunity;
- to develop and conduct programs of public information, education and research designed to eliminate discriminatory practices;
- to examine and review any statute or regulation, and any program or policy made by or under a statute, and make recommendations on any provision, program or policy that in its opinion is inconsistent with the intent of this Act;
- to inquire into incidents of and conditions leading to tension or conflict based upon identification by a prohibited ground of discrimination, and take appropriate action to eliminate the source of tension or conflict;
- to initiate investigations into problems based upon identification by a prohibited ground of discrimination that may arise in a community, and encourage and coordinate plans, programs and activities to reduce or prevent such problems;
- to promote, assist and encourage public, municipal or private agencies, organizations, groups or persons to engage in programs to alleviate tensions and conflicts

based upon identification by a prohibited ground of discrimination.

Ontario was the first jurisdiction in Canada to formally recognize the moral, social and political consequences of discrimination by enacting a comprehensive Human Rights Code in 1962. This statute prohibited discrimination on the grounds of race, creed, colour, nationality, ancestry or place of origin with respect to employment; employment agencies; housing with more than six self-contained dwelling units; public accommodation, services and facilities; signs and notices; membership in self-governing professions; and trade union membership. The Government's commitment to human rights was further confirmed by the new Human Rights Code that was proclaimed in June of 1982. The new Code prohibits discrimination with respect to employment; accommodation; contracts; goods, services and facilities; membership in trade unions, vocational associations and self-governing professions; and employment agencies on the grounds of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, age, marital status, family status, handicap, receipt of public assistance (accommodation only) and record of offences (employment only).

Conciliation and Compliance

Once the Commission is in receipt of a complaint, it is obliged to inquire into the allegations and to seek a fair settlement that is satisfactory to all parties involved, through the conciliation process. In 1982-83, 762 complaints of discrimination were resolved.

All cases that are settled in conciliation must be approved by the Commission before they are closed. A panel of three commissioners meets regularly and is responsible to the full Commission for reviewing the settlements arrived at in conciliation.

The core principle of settlement is to bring about a fair resolution of the complaint and to restore the complainant to the position he or she would have enjoyed had the discriminatory act not taken place. In addition, where the investigation reveals evidence of more pervasive discriminatory policies and practices, the conciliation negotiations will include preventive settlement proposals, such as special programs or human rights seminars for the respondent's staff.

It is also through the conciliation process that the Commission clarifies any misunderstandings that gave rise to a complaint and undertakes to eliminate any employment or business practices that deny equality of opportunity to persons protected under the Code.

Upon the panel's review of settled cases, it makes recommendations to the Commission regarding a variety of settlement options: compensation for lost earnings, out-of-pocket expenses and injury to dignity; an offer of employment, housing, service or facility; the establishment of a special program; a declaration by management of a policy of equality of opportunity; apologies; assurances of future compliance with the Code, etc.

When a settlement proposal is not in accordance with Commission policy of rectification and remedy, the panel recommends that the Commission refer the case to staff for further conciliation.

Where a case reveals evidence of a discriminatory practice or pattern that suggests a need for policy or procedural changes, the panel makes recommendations for

follow-up action. Thus, investigation procedures and conciliation strategies are constantly reviewed and revised where necessary, in light of emerging social and legal trends.

The Commission also reviews patterns of discrimination as revealed by a profile of the complaints received over specific periods. This facilitates policy decisions on the use of such strategies as employer consultations and public education to attempt to reduce persistent types of discriminatory practices.

Where the parties do not reach a conciliated settlement, the Commission, at its monthly meeting, evaluates the evidence and requests the Minister of Labour to appoint a board of inquiry, or dismiss the case in accordance with the provisions of the Code. When the Commission decides to dismiss, or not to deal with, a complaint, the complainant may request the Commission to reconsider its decision.

The Commission may recommend for consideration special programs. As mentioned, the new Code allows the Commission to review any statute, regulation, program or policy established under legislation. Following this review, the Commission may make recommendations on any provision, program or policy that is inconsistent with the intent of the Code. After June 15, 1984, the new Code will also have primacy over all other Ontario legislation, unless an Act or regulation specifically provides that it is to apply notwithstanding the provisions of the Code.

In the conciliation of each complaint of discrimination, the Commission aims to effect a satisfactory settlement. A basic objective underlying settlement is to remove the conditions leading to further arbitrary denials of equality of opportunity, and thus to reduce the multiplier effects which discrimination and stereotyping have upon the society. This principle is better understood in the context of the United Nations definition of discrimination, which refers to any distinction, exclusion, restriction or preference based on a prohibited ground. This, in turn, has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights in social or economic life.

The Commission believes that an amicable and fair resolution, worked out in good faith, leads to attitudinal change and the elimination of discriminatory practices. When conciliation fails however, Section 35(1) of the Code empowers the Commission to request a board of inquiry, if it appears that the procedure is appropriate and the evidence warrants an inquiry.

It has been argued that:

"Modern day human rights legislation is predicated upon the theory that the actions of prejudiced people and their attitudes can be changed and influenced by the process of free education, discussion and the presentation of socio-scientific materials that are used to challenge popular myths and stereotypes about people. Human rights is a skillful blend of educational and legal techniques in the pursuit of social justice."

"The philosophy underlying the approach is that people should be given an opportunity to reassess their attitudes and to reform themselves after seeing how much more severe is the injury to the dignity and economic well-being of others than is their own loss of comfort or convenience. However, if persuasion and conciliation fail, then the law must be upheld, and the law requires equality of access and of opportunity."

We have made many positive strides in the field of human rights, but we still have far to go. Complaints received by the Commission indicate that the major human rights problems in Ontario are in the areas of racial discrimination, sex discrimination, sexual harassment and discrimination against people with handicaps. Numerically, discrimination in employment represents the most prevalent complaint category.

Legislation on human rights in Ontario performs several functions. It recognizes the social and economic costs of discrimination. It states clearly the public policy of the province. It encourages people to take a stand in opposing discriminatory practices. It provides legal redress for individuals who have been discriminated against. It creates a mechanism for resolving inter-group tensions that might otherwise escalate into more explosive solutions. The Human Rights Code also expresses and reflects the values of our democratic society and provides support by example and by law for greater understanding of and respect for these values. The prohibition of acts of discrimination leads to a reduction in the levels of prejudice and stereotyping. As long as discriminatory treatment is evident, the tendency to regard people as undeserving of equal treatment will continue.

When the Code was first enacted in 1962, it was generally believed that discrimination took place only through conscious, overt actions directed against individuals. The Code has always directly addressed and remedied this form of discrimination.

However, today, while this form of discrimination still exists, another common form is discrimination resulting from seemingly neutral practices which perpetuate the effects on minorities and women of institutional, systemic or historical discrimination.

The new Code addresses this in three ways as detailed in the Legal Initiatives Section of this report. Briefly they are: the new Code concerns itself not only with the conduct of the discriminator but with the rights of the individual; it is not only the intent of a policy or practice which determines whether or not discrimination occurred, but also, the adverse effects of a neutral practice on equality of opportunity are considered; and the Commission can recommend and approve special programs, as described earlier.

Race Relations Division

In addition to Conciliation and Compliance, the second major program is the work of the Race Relations Division, whose activities are outlined more extensively, further on in this report. Created in 1979, the Race Relations Division has now been given the statutory authority to inquire into conditions leading to tensions or conflict based on race, colour, place of origin, ancestry, ethnic origin or creed, and to alleviate such problems either through its own programs, or by assisting community groups or agencies in their mediation and preventive activities.

Again last year, the Minister of Labour was a member of the Cabinet Committee on Race Relations. In addition, the Commission is now represented on the inter-ministerial committee that provides support to the Cabinet Committee on Native Affairs. The Cabinet Committee on Race Relations recently published an official Government of Ontario policy statement on race relations, and a task force report entitled, "The Portrayal of Racial Diversity in Government Advertising and Communications."

Public Education and Consultation

Respect for human rights is an old tradition in Ontario, but it is a tradition that is more fragile than we think. A climate of understanding and mutual respect among all groups will not grow of its own initiative. It requires careful and constant nurturing and encouragement through public education as well as legislative action.

The new Code requires the Commission to carry out public education programs to promote the Government's public policy of equal rights, equality of opportunity and recognition of the dignity and worth of every person.

There is an ongoing need to educate groups and individuals regarding the provisions of the new Code and the reduction of prejudice and stereotyping conditions which inevitably lead to discrimination. During fiscal year 1982-83, the Chairman travelled throughout the province, participating in approximately 200 events concerning the new Code and the Commission's programs of conciliation and compliance, race relations and public education.

The Commission has taken the opportunity presented by the passage of the new legislation to initiate consultations with senior officials of major institutions, organizations and corporations, with a view to informing them about the requirements of the new Code, and assisting in the development of human rights policies and preventive programs. Close contact is maintained with community, business and labour leaders; law enforcement agencies; educational, media, and religious institutions; social service agencies and governments through speaking engagements, media interviews and liaison with community groups. As well, the Commission's staff continued its extensive educational programs of seminars, films, conferences, literature distribution and consultations.

During the monthly meetings of the Commission and the Race Relations Division, a number of individuals and organizational representatives are invited to share information in order for the Commission to be kept informed of particular human rights issues and problems. These discussions assist the Commission in the development of policies and programs. Through this format, mutual goals are recognized, as well as the need for cooperation in achieving them.

Close contact with organizations, community groups and individuals committed to the advancement of human rights principles enabled the Commission to hold and co-sponsor several conferences throughout the province during the fiscal year, in an attempt to further increase awareness of and sensitivity towards human rights in our society. Two examples will be outlined in the section of this report highlighting the work of the Race Relations Division.

In March of this year, the Chairman's Office took the initiative of mailing the new Declaration of Management Policy poster to over 3,000 municipalities, industries, businesses, professional organizations, service clubs, unions, educational institutions and personnel associations. The poster was designed to reflect both the spirit and the provisions of the new Code, and calls upon each of us to lend support to the goal of harmonious relations among all employees in the workplace. The overwhelming response reinforces the belief that the timeless values of respect, fairness, equality of opportunity and dignity are shared goals which help to strengthen the social and moral fibre of our society.

In addition, the Commission launched a systematic program of education within the schools throughout Ontario in the fall of 1982. The response continues to be most

positive, and seminars presented in the schools by the Commission's staff have been extremely well received.

"Affirmation"

Rabbi W. Gunther Plaut, Vice-Chairman of the Commission, the author of several books and a regular contributor to the Toronto Globe and Mail, is the editor of "Affirmation," the Commission's official newsletter. It contains feature stories, personal profiles, examples of significant cases and settlements, findings of boards of inquiry, editorials and articles on important human rights topics. Articles are written by staff, commissioners and interested members of the public. "Affirmation" has a circulation of 10,000 including employers, schools, labour and community organizations and members of the general public.

The June 1982 issue was devoted to the 20th anniversary of the Human Rights Code and the proclamation of the new Code, by way of a historical account of the development of human rights in Ontario, and various perspectives on the extended provisions of the Code.

The December issue recognized International Human Rights Day and the 34th anniversary of the United Nations Universal Declaration of Human Rights. In his editorial, the Chairman urged the residents of Ontario to make special efforts to promote international understanding, cooperation and peace, as well as universal respect for human rights.

In addition, the Commission issued a province-wide public statement to the media which called upon all agencies, organizations, municipalities, communities and individuals concerned with the protection and promotion of human rights to give appropriate significance to Human Rights Day on December 10th. Responses to a similar letter to Ontario mayors and reeves included Human Rights Day proclamations, Human Rights Week celebrations, community forums and multicultural festivals throughout the province, special human rights activities in elementary and secondary schools, as well as media coverage of such events. The Chairman and various members of the Commission also participated in media interviews and community gatherings during the week.

The Commission has also initiated activities directed towards promoting many of the values enshrined in the United Nations Declaration for its 35th anniversary on December 10, 1983.

International Responsibilities

Ontario and Canada have been involved in the international human rights arena for many years. In signing the United Nations Declaration of Human Rights in 1948, all member nations assumed an obligation to promote human rights at home and abroad. Canada's interest was heightened with the Helsinki Conference of 1975 and the adoption of its Final Act, which was the reiteration by all participants of their international human rights commitments.

The Commission forms part of, and holds membership in a network of human rights agencies on both the national and international levels. Commission representatives, for example, participate annually in conferences held by the International Association of Official Human Rights Agencies, the Canadian Association of

Statutory Human Rights Agencies, and the Federal-Provincial Committee of Officials Responsible for Human Rights. A number of representatives from recently created human rights commissions abroad sought information and assistance by exploring and examining the role and function of the Commission.

The International Covenant on Economic, Social and Cultural Rights, the International Covenant on Cultural and Political Rights and the Optional Protocol to the Covenant on Civil and Political Rights were adopted by the United Nations General Assembly on December 16, 1966. Ontario gave its written acceptance of these two Covenants in 1972, prior to Canada's ratification of both in 1976. In ratifying these agreements, Canada recognizes its obligations under the documents and confirms its commitment to the elimination of discrimination and the promotion of equality of opportunity.

A Federal-Provincial Ministerial Conference on Human Rights, held in 1975, created a new national organization called the Continuing Federal-Provincial Committee of Officials Responsible for Human Rights. This Committee, which meets at least twice a year, was established to provide and maintain the liaison and consultation necessary for Canada to meet the obligations inherent in signing the International Covenants. Ontario has been an active participant on the Continuing Committee since its inception.

The Continuing Committee has coordinated several conferences of ministers responsible for human rights, modelled after the initial one held in 1975, at which ministers from all jurisdictions in Canada review and discuss current issues and initiatives in the area of human rights. Ontario was strongly represented at the conference held in February 1981, and will participate in the next one, which is scheduled for September of this year. This forum enables the members to gain a common understanding of problems and concerns in the different regions of Canada, and to keep abreast of Canada's role in addressing human rights issues in the international arena. In addition, the ministers propose ways in which human rights programs in Canada can be strengthened to ensure that they conform with the principles enunciated in the International Covenants.

A Coalition for Human Rights has been formed to plan the celebrations of the 35th anniversary of the United Nations Declaration of Human Rights. More than 30 national human rights and civil liberties organizations have joined together to develop a year of special activities, and to plan a joint national event in December. The Coalition represents women, Native Peoples, racial, religious and ethnic groups, disabled people and many other groups concerned with the issues and principles contained in the Declaration.

This Coalition reflects an example of a strong commitment on the part of organizations working in the area of human rights in Canada. Clearly, individual human rights commissions and human rights legislation alone will never end discrimination. The Ontario Human Rights Commission has a uniquely important role to play, but it is imperative that all individuals, organizations and institutions in our society take responsibility for improving human rights. The overwhelming majority of people in Ontario are men and women of goodwill. However, we must all work together to build a society based on equality of opportunity, quality of life, dignity and respect.

To quote the Premier of Ontario:

"Only by working together to forcefully attack deliberate bigotry, and to extend a helping, understanding hand to those who discriminate out of thoughtless unawareness, can we create the kind of community in which we can all contribute as equals to our country's development."

THE NEW ONTARIO HUMAN RIGHTS CODE

On June 15, 1982, the new Human Rights Code came into effect. Although the former Code was amended many times, the new statute is the first comprehensive revision of Ontario's human rights legislation since it was first enacted in 1962. The new Code responds affirmatively to the 1977 report of the Ontario Human Rights Commission entitled "Life Together," which resulted from a study of the state of human rights in Ontario under the leadership of Dr. Thomas H.B. Symons, Chairman of the Commission from 1975 to 1978.

Among the new areas covered by the Code are the following:

- the provision of equal enjoyment without discrimination of goods, services and facilities generally (not limited to those available in a place to which the public is customarily admitted);
- the right to contract on equal terms;
- the prohibition of discrimination because of a person's association with a person identified by a prohibited ground;
- the prohibition of constructive discrimination;
- the prohibition of harassment of an employee by the employer or another employee because of a prohibited ground of discrimination;
- the prohibition of harassment of an occupant of accommodation by the landlord or another occupant because of a prohibited ground;
- the prohibition of sexual solicitation, reprisal or threat of reprisal by a person in a position of authority.

The new Code is the first anti-discrimination legislation in Canada to prohibit explicitly harassment and unwelcome sexual advances.

Several new prohibited grounds of discrimination have been added:

- protection is now provided against discrimination because of handicap, which is defined to mean real or perceived physical handicap, mental retardation or impairment, learning disability, or a mental disorder;
- discrimination because of family status, defined to mean a parent-child relationship;
- discrimination with respect to employment because of record of offences;
- discrimination with respect to accommodation because of receipt of public assistance;

- discrimination because of age is now prohibited in all areas. Age is defined as 18 and over in all areas except employment, in which age is defined as 18 to 65;
- the ground of marital status has been extended to include discrimination in accommodation.

Among other new provisions are the following:

- discrimination in employment against domestic workers in a private household is prohibited;
- boards of inquiry are empowered, subject to considerations of reasonable cost, to make orders respecting the modification of access or amenities after a finding of discrimination on the ground of handicap has been made;
- the Code binds the Crown, and will have primacy over other legislation on June 15, 1984;
- the Code provides for additional sanctions against discrimination in employment by contractors under government contracts, upon a finding of discrimination by a board of inquiry.

LEGAL INITIATIVES

1982-83

Role of Commission Legal Counsel

In June 1981, the Commission employed its first full-time staff legal counsel. Prior to that, the Commission had engaged in-house lawyers on a contractual basis, and in addition, used the services of legal counsel from the Ministry of the Attorney-General for its legal advice and representation before boards of inquiry and the courts.

The primary role of legal counsel is to advise the Commission, its staff, and members of the public with respect to the statutory interpretation of the provisions of the Code and their implementation. Not only has the introduction of substantive changes in the Human Rights Code, 1981 made legal input necessary, but the nature of the cases, presentations and issues before the Commission are of an increasingly technical and complex nature.

The absence of statutory regulations and guidelines puts a premium on the legal analysis and interpretation of the provisions of the Code. This role is especially important due to the fact that the Code is a statute involving both social and legal complexities: its interpretation and application change significantly in response to developments in jurisprudence and emerging patterns and trends of discrimination.

A number of trends have increased the role of legal counsel in the administration and enforcement of the Code. A key function of counsel is to evaluate the evidence gathered in investigation in order to determine whether or not it establishes proof of the complaint allegations. The increasingly subtle nature of discriminatory practices and the growing incidence of indirect and systemic discrimination have made it more difficult to determine when a contravention of the Code has or has not occurred.

The complaint process has therefore become more complex, and legal issues tend to arise frequently during investigation, conciliation and settlement. This factor is compounded by an increase in the number of jurisdictional questions that have emerged as the grounds and areas of coverage of the Code have been strengthened and expanded.

Another important role of legal counsel is to assist in the development of policy and in recommending amendments to the Code, so that its provisions can keep pace with the changing patterns and trends of discrimination.

In addition, legal counsel conducts training sessions of the Commission's staff, and participates in seminars and conferences involving representatives from business, industry, unions and other sectors.

Human Rights Code, 1981

In June 1982, the new Human Rights Code was proclaimed. The new statute has not only expanded and strengthened the duties and functions of the Commission but has significantly expanded the rights of the people of Ontario to freedom from discrimination.

Procedural Changes

In accordance with the principles of natural justice, the new Code provides for several new procedures. When the Commission decides not to request the appointment of a board of inquiry, it must provide each party to the complaint with the reasons for its decision, and the complainant may apply to the Commission for reconsideration of its decision. The respondent is notified of the complainant's application for reconsideration and is given a chance to respond.

Also, the Code provides a fair and expeditious mechanism for dealing with complaints which should not be proceeded with. Accordingly, the Commission may refuse to deal with a complaint if the facts on which the complaint is based occurred more than six months before it was filed, if the Commission feels it is trivial, frivolous, vexatious or made in bad faith, or if there is a more appropriate proceeding under another Act for dealing with the complaint. In such cases, however, the complainant is entitled to request the Commission to reconsider its decision.

There had been considerable concern voiced about the delays involved once a board of inquiry is appointed. To respond to this concern, two statutory time limits have been established to expedite the process. The hearing must convene within thirty days of its appointment by the Minister and the board must render its decision within thirty days of the conclusion of the hearing.

In addition to the procedural safeguards provided by the Code, the Commission's administrative procedures have been developed so as to ensure fairness to all parties involved.

Substantive Changes

When anti-discrimination legislation was first introduced in Canada, it was primarily concerned with prohibiting the discriminatory conduct of those who consciously and deliberately discriminated against others. It is generally agreed that the legislation and the Human Rights Commissions that have enforced it have had considerable success in addressing this type of conduct. However, as more experience with this approach was gained, it became evident that many groups were still not achieving equal opportunity in our society as a result of institutionalized or systemic discrimination.

The new Human Rights Code, 1981 represents an important change of focus and addresses the problem of systemic discrimination in several important ways.

Most noticeable is the change of wording in the Code. The previous Ontario Human Rights Code emphasized the conduct of the discriminator in providing that, "No person shall discriminate..." The language of the new Code concerns itself not with the conduct of the discriminator but with the rights of the individual: "Every person has a right to equal treatment without discrimination...."

The Code prohibits not only overt discrimination, but also constructive discrimination, or practices that are not openly discriminatory but are discriminatory in their effect. The wording of section 10 is as follows:

A right of a person under Part I is infringed where a requirement, qualification or consideration is imposed that is not discrimination on a

prohibited ground but that would result in the exclusion, qualification or preference of a group of persons who are identified by a prohibited ground of discrimination and of whom the person is a member, except where,

- (a) the requirement, qualification or consideration is a reasonable and bona fide one in the circumstances; or
- (b) it is declared in this Act that to discriminate because of such ground is not an infringement of a right.

These provisions are designed to address practices that are neutral on their face but are just as effective in denying equal opportunity as are direct or indirect acts of exclusion. For example, minimum height and weight requirements that have the effect of excluding most women from a particular job, would constitute a contravention of the Code unless they could be shown to be genuine and reasonable in the circumstances.

The former Code did not contain specific provisions with respect to constructive discrimination, and its application to cases involving this type of discrimination has never been judicially interpreted by the Supreme Court of Canada. However, the case of *O'Malley v. Simpsons-Sears Ltd.* will soon be heard by this Court. In this case, Mrs. O'Malley alleged that her job was reduced to part-time because her religious beliefs made it impossible for her to work on Saturdays. When the board of inquiry dismissed the case, the Commission appealed the decision to the courts, which held that the previous Code prohibited intentional discrimination only and found that there was no intent on the part of Simpsons-Sears Ltd. to discriminate against Mrs. O'Malley because of her creed.

Although the new Code specifically includes constructive discrimination, the Commission decided to appeal the Court of Appeal's decision because of its far-reaching implications, not only for the determination of cases pending under the old Code, but also for other Canadian jurisdictions whose statutes lack specific mention of constructive discrimination.

The Supreme Court of Canada granted leave to the Commission to appeal the decision and granted intervenor status to the Canadian, Manitoba, Saskatchewan and Alberta Human Rights Commissions, underlying the national importance of the issue. The decision is pending.

The third method of addressing the problem of systemic discrimination is through the implementation of special programs. Special programs do not contravene the Code, and may be implemented without the prior approval of the Commission. Section 13 defines a special program and empowers the Commission to inquire into and make recommendations regarding such programs, on its own initiative, at the request of the person seeking to implement a special program, or on receipt of a complaint alleging that a particular program does not meet the statutory requirements. In addition, section 28(c) makes it a function of the Commission to recommend the implementation of special programs.

Mandatory Retirement

The Human Rights Code, 1981 provides a right to equal treatment in employment without discrimination on the basis of age (18 - 65 years of age), except where the age of the applicant is a reasonable and bona fide qualification because of the nature of the job.

The previous Code protected people between the ages of 40 and 65 from discrimination in employment, except where age was a bona fide occupational qualification. The Supreme Court of Canada considered this issue in the case of the Ontario Human Rights Commission et al. v. The Borough of Etobicoke. In that case, it was held that the mandatory retirement of firefighters at age 60, which was provided for in the collective agreement, was discriminatory and in contravention of the Code.

That decision now stands for two important propositions. Firstly, the onus is on the employer to establish that the age requirement is reasonable and bona fide. In such cases, evidence as to the relationship between the aging process and the safe, efficient performance of the job may be persuasive.

Secondly, the Court decided that the Code overrides the terms of collective agreements when they violate the Code. In its decision, the Court stated that the Code, a public statute, has been enacted for the benefit of the community at large and of its individual members, and it may not be waived or varied by private contract.

The case is of importance not only because of the fact that many employers in Ontario have similar mandatory retirement policies, but also because the issue of mandatory retirement is an extremely important one in light of our aging population.

DISPOSITION AND SETTLEMENTS

1982-83

TABLE 1 - Complaints Received, 1982-83

Table 1 shows that 831 complaints were received during the fiscal year, representing an increase of 146 (20%) over the 695 received during 1981-82. The increase is almost totally accounted for by the new grounds introduced in June 1982. Of the 831 complaints filed, 266 alleged a contravention of one of the new provisions of the Code.

Employment discrimination was alleged most frequently (at 81% of complaints), thus constituting the bulk of compliance work. Race/colour was the predominant ground (27%), followed by sex (16%), handicap (15%), sexual harassment (12%) and age (11%).

In this first year of the application of the new provisions, allegations of discrimination because of race/colour decreased considerably from their previous percentage of the total, while complaints based upon sex remained relatively constant.

TABLE 1 - Complaints Received by Ground and Code Provision: 1982-83

Code Provision:	Ground:	Race/Colour		Ancestry/Citizenship/ Ethnic Origin/ Place of Origin		Sexual Harassment/ Solicitation/Reprisal		Age $\oplus\ominus$		Marital Status		Family Status \oplus		Handicap \oplus		Public Assistance \oplus		Record of Offences \oplus *		Percentage	
		Female	Male	Female	Male	18	25	35	45	55	65	75	85	95	105	115	125	135	145	Total	Percentage
Services		20	10	1	2	1	-	4	8	3	28	-	-	-	-	-	-	-	78	9	
Accommodation		24	2	1	1	-	-	4	9	3	4	7	-	-	-	-	-	-	55	7	
Contracts \oplus		2	-	-	-	1	-	-	1	-	3	-	-	-	-	-	-	-	7	1	
Employment		180	57	22	93	32	98	77	21	4	89	-	-	-	-	-	-	-	676	81	
Vocational Associations		2	1	-	3	-	1	1	-	1	-	-	-	-	-	-	-	-	9	1	
Reprisal		1	-	-	3	1	-	1	-	-	-	-	-	-	-	-	-	-	6	1	
Total		229	70	24	102	35	99	87	39	11	124	7	4	831	100%						
Percentage		27	8	3	16	12	11	5	1	15	0.5	0.5	100%								

\oplus Since June 15, 1982, new Code provisions and grounds.

$\oplus\ominus$ 18 to 39 since June 15, 1982 (17 complaints); 40 to 65 continuing from old Code (70 complaints).

* Only in employment.

** Only in accommodation.

TABLES 2 AND 3 - Cases Closed, 1982-83 (1981-82)

Table 2 shows a decrease in cases closed, from 1,000 in 1981-82 (Table 3) to 762 in fiscal year 1982-83. This decrease was mostly due to the surge of events related to the introduction of the new Code which diverted a substantial amount of staff time from casework to training on the new areas and procedures of the Code. Also, there was a substantial increase in reviews of application forms and advertisements to make them consistent with the new provisions, and members of staff were involved in the preparation of new publications as well as an extensive public education campaign regarding all areas of the new legislation. (The increased volumes of these activities are shown in Table 6).

In addition, there are several new statutory requirements which provide for a greater degree of procedural fairness than was the case under the old Code. The complainant may apply to the Commission for a reconsideration of its decision to dismiss his or her case, and the Commission now has the discretion not to deal with a complaint in certain instances. Also, the parties to a complaint must be provided with written reasons whenever a complaint is dismissed. These procedures are discussed in the Legal Initiatives section of the Report.

Also, Section 42 of the Code provides that where a settlement of a complaint is agreed to in writing, signed by the parties and approved by the Commission, the settlement is binding upon the parties. A breach of the settlement constitutes a violation of the Code. This provision calls for more specific settlement proposals and more carefully documented negotiations than was formerly the case.

All of these provisions have increased both the investigative and administrative aspects of the case work process.

Similarly, case work is increasingly complex due to the nature of the new provisions, for instance, there may be difficulty in determining the functional capabilities of the complainant as they relate to the essential duties of the job in complaints based on handicap.

Table 2 shows that the number of cases settled has increased from 58 per cent in 1981-82 to 60 per cent in the past fiscal year.

TABLE 2 - Closed Complaints by Disposition and Ground: 1982-83

Disposition:	Race/Culture	Ancestry/Citizenship	Ethnic Origin/ Place of Origin	Sexual Harassment/ Reprisal	Age [†]	Family Status [‡]	Handicap [§]	Receipt of Public Assistance [¶]	Record of Offences [⊕]	Total	Total, 1981-82
Settled	150 63%	44 54%	11 85%	92 53%	62 74%	53 59%	14 58%	3 60%	31 64%	-	-
Dismissed	75 31%	29 35%	- 38%	67 15%	13 24%	22 21%	5 21%	- - 9 19%	-	-	321 32%
Withdrawn	14 6%	9 11%	2 15%	16 9%	9 11%	15 17%	5 21%	2 40%	8 17%	1 1	82 98 10%
Total	239	82	13	175	84	90	24	5	48	1	1,762 1,000

[†] Since June 15, 1982, new Code provisions.

[‡] [⊕] From 18 to 39 since June 15, 1982 (17 complaints); 40 to 65 continuing from old Code (70 complaints).

[§] Only in employment.
[¶] Only in accommodation.

TABLE 3 - Closed Complaints According to Ground and Code Provision: 1981-82

Code Provision:	Race/ Colour	Nationality/ Ancestry	Sex/ Marital Status	Creed	Age	Total	Percentage
Employment	328	64	327	29	78	826	83
Housing	35	14	5	-	-	54	5
Public Accommodation/ Services/Facilities	30	10	27	2	-	69	7
Reprisals	17	1	7	1	2	28	3
Signs and Notices	5	-	-	1	-	6	-
Filed by Third Party	6	3	6	2	-	17	2
Total	421	92	372	35	80	1,000	100%
Percentage	42	9	37	4	8	-	100%

TABLES 4 AND 5 - Settlements Obtained, 1982-83 (1981-82)

Table 4 represents the settlements (both qualitative and quantitative) obtained during 1982-83 according to the ground of the complaint. Table 5 shows the settlements reached during 1981-82, categorized according to the social area of the complaint. A comparison can be made of the number of settlement items using both tables.

Table 4 indicates that 198 complainants received compensation for lost earnings, out-of-pocket expenses or insult to dignity in the amount of \$534,058 in 1982-83, representing an increase of \$77,136 over the previous year's total of \$456,922. Moreover, the number of complainants receiving compensation remained stable over both years (at 198 in 1982-83, and 206 in 1981-82). These figures are noteworthy given the fact that the number of complaints resolved decreased from 1,000 in 1981-82 to 762 in 1982-83.

Similar increases are evident in other types of settlements, where the two years are compared. In 1982-83, 190 complainants received offers of present or future jobs or facilities, while in 1981-82, only 95 complainants received such offers. Twenty-eight respondents agreed to implement affirmative action programs as part of a settlement in 1982-83, as compared with 16 such programs in the previous year.

Settlements in cases based on age discrimination were particularly significant this year. The economic downturn has contributed to many attempts to lay off, dismiss or impose early retirement on the basis of age. Where this was established by the investigation, complainants often received compensation for their losses and/or an offer of a present or future job. Similarly, there were some substantial settlements in cases dealing with policies imposing retirement before age 65, which are now clearly illegal in view of the 1982 decision by the Supreme Court of Canada on the issue of compulsory retirement for firefighters.

TABLE 4 - Settlements Obtained in Closed Cases by Ground: 1982-83

Settlement:	Ground:	Race/Colour Ancestry/Citizenship/ Ethnic Origin/ Place of Origin Creed	\$ 58,710 (42) *	26	23	7	24	31	17	13	145	Management Policies Written Declaration of Complaints
	Offer or Consideration of Next Job or Facility	38,872 (14)	5	2	1	1	9	5	5	3	3	36
	Specific and General Damages	4,561 (3)	3	1	1	1	5	1	1	-	-	9
	Sexual Harassment	59,183 (54)	20	40	15	33	28	9	15	15	145	
	Age	76,261 (43)	2	6	-	8	5	1	3	3	13	
	Marital Status	287,913 (32)	13	10	1	10	7	3	7	7	45	
	Family Status	1,388 (3)	1	2	2	2	3	-	1	1	12	
	Handicap	-	-	2	3	-	2	-	1	1	3	
	Receipt of Public Assistance	7,170 (7)	16	15	1	8	20	5	5	8	23	
	Record of Offences	-	-	-	-	-	-	-	-	-	-	
	Reprisal	-	-	-	-	-	-	-	-	-	-	
Total		\$534,058 (198)	88	102	28	95	106	39	51	431		

* Number of complainants who received monetary settlements.

TABLE 5 - Settlements Obtained in Closed Complaints: 1981-82

Settlement Category:	Employment	Housing	Public Accommodation/ Services/Facilities	Other	Total
Compensation (number of complainants)	\$426,084 187	\$765 5 13	\$2,149 9 14 2	\$27,924 5 3 2	\$456,922 206 95 16
Offer of Present/Next Job	65	-			
Affirmative Action	12				
Consultations/ Review of Practices	964	46	62	58	1,130

**TABLE 6 - Intake, Voluntary Compliance and Public Education Activities, 1982-83
(1981-82)**

The number of inquiries, public education activities, consultations and publications distributed increased greatly during fiscal year 1982-83, in response to the proclamation of the new Code. Both commissioners and staff devoted considerable time to activities designed to make members of the public aware of their rights and responsibilities under the new provisions.

The number of application forms and advertising reviews increased significantly as well, in response to a need to bring them into harmony with the new protections relating to handicap, age, family status, record of offences and receipt of public assistance. Many employers and businesses requested the Commission to review and amend their forms, documents and leases to ensure that they conform with the new statutory requirements.

The number of informal resolutions completed in fiscal year 1982-83 increased over the previous year. This was due to the lack of clarity with respect to the Commission's jurisdiction over some of the complaint allegations based upon the new areas of coverage. Many individuals were anxious to benefit from the new protections of the Code during its first year, and there was, in some instances, uncertainty about their application to the allegations made. Where jurisdiction was unclear, and respondents were amenable to resolving the problem, the staff attempted to seek a resolution of the matter by informal means. As precedents emerge over time, it is expected that the number of these kinds of informal resolutions will decline considerably.

	1982-83	1981-82
Inquiries	35,351 *	22,746
Referrals	4,812 *	5,059
Informal Resolutions	567	247
Application Form Reviews	1,199	538
Advertising Reviews	451	158
Exemptions	57	83
Speeches/Media Contacts/Consultations	884 **	565
Publications Distributed	543,680 *	220,000

* Totals for Compliance/Race Relations/RR Commissioner/Chairman's.

** Totals for Compliance/Chairman's Office.

Other totals for Compliance only.

TABLE 7 - Boards of Inquiry

If a complaint cannot be resolved to the satisfaction of the complainant, the respondent and the Commission, it is reviewed by the Commission which then decides whether or not to request the Minister to appoint a board of inquiry to hear and decide the case.

The board holds a hearing, considers the evidence, determines if there has been a violation of the Code and by whom, and, if discrimination is found, makes an order of settlement. It has the power to direct any party found in contravention of the Code to do anything that the party ought to do to achieve compliance with the legislation, both in respect of the complaint and in respect of future practices, and to compensate the complainant for all losses suffered because of discrimination. The Code provides that "where the infringement has been engaged in wilfully or recklessly" an award may be made for mental anguish to a maximum of \$10,000. If no evidence of discrimination is found, the board will dismiss the case.

Table 7 reveals a comparison in the number of hearings appointed and completed, during fiscal years 1982-83 and 1981-82.

	1982-83	1981-82
Boards Appointed	22	43
Boards Completed	21 *	42 **
Decisions Received:		
Decisions for Complainant/		
Settled by Parties	14	38
Decisions for Respondent	6	8
Complaints Withdrawn	1	2
Under Appeal	2	1
Boards Incomplete (from all years)	48	

* These boards involved a total of 27 complainants.

** These boards involved a total of 49 complainants.

TABLES 8 AND 9 - Sexual Harassment Cases

Table 8 shows that 340 cases have been completed to date (many others are still being processed) with an average settlement rate of 77 per cent.

With respect to the settlements reached in the 84 complaints resolved in 1982-83, 43 complainants received a total of \$76,261 in damages for earnings lost due to discrimination or as compensation for mental anguish (see Table 4). Eight complainants received offers of the job or facility denied, or consideration for the next available job or facility. A total of 26 respondents agreed to institute corrective policies to deal with and prevent future harassment, and to hold a human rights seminar for their employees.

Table 1 indicates that 99 complaints on grounds of sexual harassment, unwelcome sexual solicitation or reprisal for refusing such solicitation were filed this year. This represents 12 per cent of total cases registered.

As shown in Table 9, a total of 22 boards of inquiry have been appointed to deal with cases of sexual harassment.

TABLE 8 - Closed Sexual Harassment Complaints by Disposition, 1976-83

	Settled		Dismissed		Withdrawn		Total	
	Nos.	%	Nos.	%	Nos.	%	Nos.	%
1976/78	n/a		n/a		n/a		17	100
1978/79	30	86	1	3	4	11	35	100
1979/80	51	89	1	2	5	9	57	100
1980/81	40	66	10	17	10	17	60	100
1981/82	64	74	14	16	9	10	87	100
1982/83	62	74	13	15	9	11	84	100
Total	247		39		37		340	
Percentage of Total	76.5%		12%		11.5%		100%	

TABLE 9 - Boards of Inquiry on Sexual Harassment Cases, 1979-83

	Total Boards Appointed	Number of Complainants Involved	Decision for Complainant/ Settled by Parties	Monetary Awards	Decision for Respondent	Incomplete
1979/80	1	1	1	\$ 3,500		
1980/81	1	2			1	
1981/82	6	14	5	15,543	1	
1982/83	14	16	5	10,635	1	8
Total	22	33	11	\$29,678	3	8

DISCRIMINATION BECAUSE OF HANDICAP

1981 was designated the International Year of the Physically Disabled by the United Nations. Advertisements, conferences, sports events, newspaper articles and television programs helped to create a new awareness of discrimination against handicapped persons.

The new Code prohibits, among others, discrimination because of handicap. Discrimination because of handicap is prohibited in the areas of services, goods and facilities, accommodation, contracts, employment and vocational associations. Harassment because of handicap is prohibited in employment and accommodation.

Section 22 permits employers to raise questions regarding the extent of an applicant's handicap and its effects on his or her ability to do the job only at a personal interview. Questions about illness, injury or medical history, in the past or in the present, may not be asked on an application form or at any stage prior to the interview.

Similarly, an employer may require an applicant to undergo a job-related medical examination either during or after the interview process, but not before. In addition, the results of the examination must be used only to determine the person's ability to perform the essential duties of the employment.

These provisions address a concern that has been voiced with increasing frequency in the past few years to the effect that persons with handicaps have been denied employment opportunities because of traditional prejudices and lack of familiarity with their capabilities. In particular, it has been the Commission's experience that people have been excluded from jobs on the basis of medical questions on the application form without a determination being made as to whether the individual is able to perform the essential job functions.

ACTIVITIES - 1982-83

Conciliation and Compliance

The emphasis of Ontario human rights legislation has always been on voluntary compliance and a conciliatory approach. All cases of discrimination because of handicap throughout the province are handled by the regional staff who receive specialist guidance through an administrative arrangement established due to the unique and complex features of this new ground. Professional expertise is often necessary to assist the investigating officer in making decisions as to what constitutes the essential duties of the job and the individual's ability to perform them. Other complex cases requiring expertise include those involving novel tests of jurisdiction and complaints in which the validity of employment tests and other screening procedures are at issue.

Voluntary Compliance

Assisting employers to comply with the provisions of the Code by reviewing their pre-employment screening measures, such as advertising, application forms and pre-employment medicals, is an important specialist function. In addition, the Commission's staff advise employers about appropriate methods to determine the

essential duties and requirements of specific jobs as these relate to the individual's ability to perform them. Advising employers about recruitment strategies that will apprise handicapped individuals and their representative organizations of employment opportunities is another important responsibility.

Liaison with the Handicapped Employment Program of the Ministry of Labour, in-house seminars with handicap organizations and agencies for information exchange, contact development and networking, discussions with consultants on architectural or environmental barriers and aids and adaptations, and consultations with occupational therapist associations are all important aspects of the outreach program. These consultations explore such areas as functional capacity analysis and medical assessments to determine job performance ability and potential.

In addition, members of staff conduct seminars for supervisors and managers in the Ministries of Labour, Community and Social Services and the Workers' Compensation Board, in order to increase their awareness of the provisions of the Code relating to handicap.

Complaints of Discrimination

During the period June 15, 1982 to March 1983, the Commission handled 124 formal complaints. Of these 31 were resolved, nine were dismissed by the Commission, either due to lack of jurisdiction or lack of evidence to substantiate the complaint, and eight were withdrawn by the complainant. The remaining 76 were still active at March 31, 1983.

Of the formal complaints filed, 116 have been on the ground of physical handicap and eight have been on the ground of mental handicap. The types of handicapping conditions are shown on page 38.

Public Education

The Commission has conducted a comprehensive educational campaign on discrimination because of handicap. This includes speeches, consultations, awareness sessions, seminars, workshops, conferences and media interviews.

The Commission continues to develop future educational initiatives on a province-wide basis for business and industry, unions, vocational associations, educational systems, inter- and intra-government agencies, voluntary associations and religious associations.

The Commission has developed and acquired an extensive collection of resource information pertinent to discrimination against disabled persons. These materials deal with such subjects as existing legislation which protects the rights of the handicapped and related legal interpretations and case law.

A priority of the public education program is the development of media and public educational strategies to sensitize and educate handicapped individuals and their organizations about the legislation and its application. This includes giving speeches and conducting awareness seminars and workshops in centres across the province.

In addition to using mainstream and community broadcast and print media, articles prepared by the Commission are included in the newsletters, papers and reports which are issued by interested organizations to their memberships.

Staff Training and Development

Training sessions for the Commission's staff on the ground of handicap are conducted on a regular basis at regional staff meetings and workshops. In-house seminars and consultations for staff are conducted with consumer organizations and agencies, at which available community resources are examined for their application to the Commission's programs. Among the representative organizations are the March of Dimes, the Advocacy Resource Centre for the Handicapped, the Ontario Association for the Mentally Retarded, the Blind Organization of Self-help Tacties and the Canadian Hearing Society.

The staff have also met with specialists in removing architectural and environmental barriers and consultants on aids and adaptations, such as Technical Aids and Systems for the Handicapped, of Sunnybrook Hospital, and the Community Occupational Therapy Associates. Consultations are routinely held with physicians, occupational- and physio-therapists and vocational rehabilitation counsellors, in order that the staff may become knowledgeable about techniques for assessing the relationship between various handicapping conditions and job performance. The Commission's resource centre contains materials obtained from other human rights commissions and agencies or organizations involved with various types of handicap, and staff are regularly kept abreast of new developments in North America and overseas.

Program Development

Developing strategies to eliminate both physical and psychological barriers to equality of opportunity in all areas protected under the Code is a critical aspect of the program.

Advising respondent groups such as employers, landlords and business persons about effective, low-cost methods of providing access and amenities for the physically handicapped, is an important feature of the Commission's consultative work. This activity is due to the provisions of Section 16 of the Code that the Commission may use its best endeavours to effect a settlement as to the provision of access or amenities, or as to the duties or requirements, even though lack of access or adaptation does not constitute a violation of the statute.

The Commission is establishing working committees composed by members representing specific areas in which discrimination is prohibited, such as services and accommodation. Also represented are specialists, human rights officers, and client group members, who work together to develop guidelines to facilitate equal opportunities for the handicapped.

Both commissioners and staff are developing and maintaining on-going liaison among consumer and advocacy organizations, public and private agencies and employers, to increase awareness of the provisions of the Code and the dynamics and consequences of discrimination and prejudice. These forums are essential to the sharing of ideas and information on current issues and problems.

TABLE 10 - Handicap Complaints Received by Type of Handicap and Code Provision: 1982-83

Type of Handicap:	Code Provision:	Services		Accommodation		Employment		Voluntary Associations		Percentage	
		Code	Provision	Total	Contracts	Total	Employees	Associations	Total	Percentage	
Sensory (vision/hearing/speech/etc. impairments)	6	1	-	14	-	21	17	-	-	-	
Respiratory (asthma/lung diseases/etc.)	-	-	1	1	-	-	2	2	-	-	
Limbs and Digits (amputation/impairment of limb/digit/etc.)	2	-	-	14	-	-	13	16	-	-	
Cardiovascular (heart disease/hypertension/stroke/arteriosclerosis/etc.)	-	-	-	5	-	-	5	4	-	-	
Neuromuscular (dystrophy/sclerosis/cerebral palsy/quadrilegia/etc.)	10	1	-	4	-	-	15	12	-	-	
Neurological (epilepsy/seizures/brain injury/etc.)	2	-	-	7	-	-	9	7	-	-	
General Diseases or Disorders (back injuries/allergies/cancer/diabetes/hermia/etc.)	2	-	1	32	-	-	35	28	-	-	
Miscellaneous (multiple handicaps/obesity/sick leave/etc.)	4	-	-	9	-	-	13	10	-	-	
Learning Disability (dyslexia/etc.)	-	-	-	-	-	-	-	-	-	-	
Mental Retardation (or mental impairment)	1	-	-	-	-	-	-	1	1	-	
Mental Disorder (psychiatric illness/personality disorders/addictions)	1	2	1	3	-	-	7	6	-	-	
Total	28	4	3	89	-	124	100%				
Percentage	23%	3%	2%	72%	-	100%	-				

TABLE 11 - Complaints on the Ground of Handicap Received by Canadian Human Rights Commissions

	British Columbia		Federal		Manitoba		Nova Scotia		Quebec		Saskatchewan		
	Nos.	%	*	Nos.	%	Nos.	%	Nos.	%	Nos.	%	Nos.	%
1978/78-79	n/a	n/a		45	20	24	7	-	-	-	-	-	-
1979/79-80	n/a	n/a		85	22	33	6	33	8	98	11	-	-
1980/80-81	21	3		92	22	31	8	-	-	152	17	51 **	21.5
1981/81-82	n/a	n/a		112	23	47	7	-	-	174	18	35	20.0
1982/82-83	31	n/a		103	26	63	8	15	4	104	17	39	18.5
	Ontario - 124 complaints (15%) June 15, 1982 to March 31, 1983.												

* Percentage of total complaints received in that year.
 ** August 7, 1979 to December 31, 1980.

Type and Date of Coverage

- British Columbia - physical and mental handicap covered under "unreasonable cause," since the late 1960's.
- Federal - physical, since 1978.
- Manitoba - physical, since 1977 (4 complaints - 1.5% of total) and mental, since 1982.
- Nova Scotia - physical, since 1975 (1975 to 1977, 8 - 2.4%).
- Ontario - physical and mental, since June 15, 1982.
- Quebec - physical and mental since 1979.
- Saskatchewan - physical, since August 1979.

EXAMPLES OF
COMPLAINTS OF DISCRIMINATION

1982-83

EMPLOYMENT

Race, Colour, Nationality, Ancestry, Place of Origin

A black man of Nigerian origin had been employed for several months as a computer programmer in a large business operation. He alleged that he had not been sent on training courses as his white counterparts had, and was denied a merit increase along with several other black employees. He left the company for a better opportunity and filed a complaint with the Commission alleging discriminatory terms and conditions of employment because of race, colour, ancestry and ethnic origin.

During investigation, it was found that management of the company did not use objective and consistent methods in making decisions about which employees should take external training courses and receive merit increases. The evidence supported the complainant's allegations. In addition, personnel documentation provided by the company indicated that two memos from senior managers to the complainant's supervisor commanding the complainant for good work performance, were never passed on to him.

The complainant and respondent agreed to the following terms of settlement during conciliation:

- compensation in the amount of \$3,800.00, representing \$2,300.00 for lost earnings due to discrimination, and \$1,500.00 for insult to his dignity,
- a letter of reference,
- a company policy of non-discrimination, to be communicated to all employees in a staff directive, and an article on the provisions of the Code in the company's magazine.

The complainant, a black woman, had been employed as a cashier in a large retail store for several years before being promoted to a supervisory position. She alleged that her new supervisor began to find fault with her work performance and to belittle her in front of other employees and customers. She also made frequent references to racial problems in England, and asked pointed questions about the complainant's marriage to a white man. The complainant alleged that she discussed these problems with the manager, but that no action was taken. She finally resigned due to the tension in her work environment, and filed a complaint with the Commission alleging discrimination in employment because of race and colour.

Investigation revealed that other employees had heard the supervisor's remarks and found them offensive. The manager said that he felt he had dealt with the problem

by having the supervisor apologize to the complainant. He stated that he was not aware that the situation had not improved.

In conciliation, both parties agreed to the following items of settlement:

- financial compensation in the amount of \$1,000.00 representing earnings lost between the date of the complainant's resignation and the date she began a new job,
 - a letter of apology to the complainant,
 - a letter of reference,
 - assurances to the Commission of the company's policy of non-discrimination and the posting of Human Rights Code cards in public areas of the store.
-

A white Canadian-born sales clerk alleged that she and a white co-worker had been subject to terms and conditions of employment that were less favourable than those applied to their Chinese co-workers. It was alleged that the company's managers, who were Chinese, paid the white workers less, although their duties were the same. The woman filed a complaint with the Commission alleging discrimination in employment because of race, colour, nationality, ancestry and place of origin.

The investigation revealed evidence in support of the allegations regarding wages. Company records indicated that the white workers were paid considerably less than the Chinese employees, despite the fact that the complainants had better sales experience.

In conciliation, the respondent agreed to compensate the complainants for earnings lost due to discrimination. One complainant received \$1,300.00; the other received \$600.00. In addition, the employer notified the Commission in writing of changes in policy with respect to discriminatory employment practices.

The complainant, a woman of Pakistani origin, alleged that she had been working as a financial analyst for a large insurance company for several years. She claimed that discriminatory treatment had occurred with respect to promotional opportunities, salaries, increments and training, with employees of British ancestry receiving more favourable consideration in all of these areas. The complainant had received a promotion during her employment with the company, but she alleged that several senior managers had attempted to impede her progress. She left the company for a better job, and filed a complaint with the Commission alleging discrimination in employment because of race, colour, nationality, ancestry and place of origin.

During investigation, the evidence revealed that white employees in the complainant's category had received higher salaries and more extensive training and instruction than she had. Nevertheless, an examination of her performance appraisals revealed that she had made special efforts to take on challenging

assignments and to complete her work ably and on time. Her work performance was judged to be good.

The Commission prepared employee progression charts based upon company records, and they revealed rapid advancement of certain white employees and slow progress of the complainant, despite comparable work performance. In discussions with other employees, it was learned that the complainant's efforts and achievements were not acknowledged or rewarded as often as those of other employees, and they believed that the problem was due to her racial and ethnic origin.

In conciliation, the parties agreed to the following items of settlement:

- financial compensation for the complainant in the sum of \$9,000.00 for earnings lost due to discrimination,
 - a letter of reference and a statement that the complainant is eligible for rehiring at any time,
 - the establishment of a company policy of non-discrimination, with procedural changes introduced to eliminate differential treatment that is contrary to the Code.
-

The complainant, a black man originally from Trinidad, had worked as a production control clerk at the respondent company for two years before he was promoted to shift leader. He alleged that black employees had to wait longer for promotions because they were passed over in favour of less qualified white workers. In addition, the complainant alleged that he was reassigned to new duties several months after his promotion, without receiving adequate training for the posting. He was later dismissed. His complaint alleged discrimination in employment because of race, colour and ethnic origin.

The evidence revealed that the complainant had not been promoted earlier because other more qualified employees had been successful in previous competitions. Company records showed that there have been black employees promoted where white workers had not: seven non-whites had received promotions in the complainant's department, as compared with 14 whites.

In addition, the complainant had been sent on three training courses, the same number as his white counterparts had taken. The Commission learned that his dismissal was based on his improper supervision of an employee and failure to report for work on several occasions. White employees were similarly disciplined for the same infractions.

When the complaint could not be settled in conciliation, the Commission dismissed the case and provided the parties with the following reasons: The evidence indicated that black employees did receive promotions on an equal basis with whites, non-white employees at the company did not share the complainant's perception of discrimination and the complainant had a poor work record.

An East Indian man was dismissed from his job as an assembler in a large manufacturing company. He alleged that during his two years with the company, he had been assigned to the less desirable shifts and job duties. He filed a complaint with the Commission alleging dismissal and discriminatory terms and conditions of employment because of race, colour and ethnic origin.

The evidence indicated that the complainant's work performance and levels of productivity were poor. The employer placed him in three different departments over the two-year period, in order to evaluate his performance in duties more in keeping with his skills and experience. Although the complainant received several written warnings about his performance, there was no improvement. In addition, several foremen testified that the complainant refused to work cooperatively with his co-workers, and frequently left tasks for other workers to complete.

When a settlement could not be reached in conciliation, the Commission dismissed the complaint and provided both parties with the following reasons: The evidence showed that during the complainant's period of employment, he was rated between average and unacceptable in various placements at the company. He worked under several foremen, all of whom gave unfavourable evaluations of his work performance.

A man originally from Portugal had been employed for four years as a housekeeper in a hotel. He alleged that he had been disciplined unfairly by a new supervisor, and that six months after the harassment began, he was forced to resign his position. His complaint alleged discrimination in employment because of ethnic origin.

The evidence revealed that the complainant had received several written warnings about poor work performance. The employer informed him that if the problems continued, he would be placed on one month's probation. The company's personnel records showed that the complainant's supervisor had written him a letter setting out several regulations he had not observed, including lengthy unexplained absences from his work site.

When conciliation efforts failed to achieve a settlement, the Commission reviewed the complaint. The employer had agreed in conciliation that the complainant would be fairly considered for any openings for which he was qualified at other hotels in the chain. The Commission dismissed the complaint because the evidence showed that the complainant's ethnic origin was not a factor in the employer's treatment of him.

Sex, Marital Status

Two women had been employed as casual workers in a branch of a large retail chain. They had been assigned on a regular basis to a 40-hour week since starting with the company, but were later informed that their hours would be cut to 20. The women alleged that the hours of temporary employees, all of whom were male, were not cut back. In addition, they stated that female casual employees were laid off more frequently than the male temporary employees, in spite of the fact that their duties were the same. Their complaints alleged discrimination in employment because of sex.

During investigation, documentation supplied by the employer confirmed the complaint allegations. The evidence indicated that the two complainants, as well as other female employees, had consistently been given fewer hours and were the first to be laid off in periods of work shortages.

In conciliation the parties reached agreement on the following items of settlement:

- the hours of work assigned to casual and temporary employees would be equalized,
 - the employer would engage in an affirmative action program to increase the employment opportunities of female employees,
 - the complainants would be offered positions as temporary employees, and each would receive \$325.00 in compensation for earnings lost due to the reduction in their hours,
 - the employer provided assurances of this policy of non-discrimination.
-

A woman alleged that she responded to a newspaper advertisement for a utility worker with a large manufacturing firm. Several weeks later, she and three male applicants were interviewed for the position. She claimed that an employee in the personnel department told her that if she were hired, she would be the first woman in the job. A week later, she was informed that her application had been rejected, but she was told that the company had openings for "female packers." Her complaint alleged discrimination in employment on the basis of sex.

During investigation, it was determined that the company had two entry level positions - one as packer and one as utility worker - into which persons hired were channelled according to sex. A review of application forms and hiring into the two categories revealed that female applicants with the same experience as their male counterparts were never placed in the "utility worker" category.

In conciliation, the respondent agreed to compensate the complainant in the amount of \$3,900.00 for earnings lost as a result of discrimination. Also, the respondent wrote a letter to the Commission containing assurances of its policy of non-discrimination, and posted Human Rights Code cards on the business premises. The Commission will monitor the respondent's hiring practices after one year to ensure continuing compliance with the provisions of the Code.

Two married women had been employed as police constables on a municipal police force for 10 years. They alleged that they had experienced discriminatory treatment in promotional opportunities and work assignments, and were denied desirable cross-postings. They claimed that they were not allowed to go on the regular shift system to which male constables were automatically posted, in order to be protected from

dangerous situations. Their complaints alleged discrimination in employment because of sex and marital status.

The Commission called a meeting which was attended by both complainants and senior officials of the police commission and the police department. Evidence indicated that certain ranking and senior members of the force felt that women were not suited to police work, although the complainants believed that these attitudes were not shared by the chief of police. Documentation revealed that the women were not treated equally with respect to work assignments and consideration for promotion.

During conciliation discussions, the senior officials were anxious to resolve the complaints and were receptive to the Commission's recommendations for preventative measures to deal with systemic discrimination as it affects female applicants and employees. The following items of settlement were agreed to:

- constructive action will be taken to ensure equality of opportunity with respect to males and females in all phases of the recruitment, hiring and employment relationship. A management directive to all staff will set out this policy,
 - a human rights seminar will be presented to all members of the force,
 - a qualified, independent woman will be assigned to the promotional selection committee,
 - an improved recruitment, evaluation and hiring system will be established with respect to applications for promotions and cross-postings,
 - a written statement will be placed on the files of the complainants that the problems they encountered early in their career were not of their making and will not be held against them in their career advancement.
-

The complainant had been hired as an insurance agent as part of a sales representative-in-training program offered by her employer. She alleged that her supervisor began to subject her to unwelcome sexual advances shortly after she started her training. She stated that as soon as she confronted the supervisor about his behaviour, he became overly critical of her work performance. She also alleged that she was called in by the manager, who told her that he had had reports that she was uncooperative and unwilling to accept instructions.

After she explained the problem to the manager, he transferred her to another section. She soon realized that she was missing the valuable training, knowledge and expertise that had been available to her in her former posting. She then resigned her position.

Her complaint alleged discriminatory terms and conditions of employment and constructive dismissal because of her sex.

During investigation, it was learned that the supervisor had made similar advances toward other female staff. Also, several senior managers testified to the Commission that the reassignment of the complainant to another department placed her at a competitive disadvantage with respect to training opportunities.

In conciliation, the parties agreed upon the following settlement:

- a memo to staff regarding the company's policy prohibiting sexual harassment,
 - a letter of apology to the complainant and written assurances to the Commission of the company's non-discriminatory policy.
 - a letter of reference for the complainant,
 - financial settlement of \$6,500.00 in compensation for earnings lost due to discrimination and insult to dignity.
-

The complainant had been employed for several months as a bookkeeper in a large drug store. She alleged that she had received numerous sexual advances from the owner-manager, in spite of the fact that she made repeated requests to be left alone. She finally chose to resign from the company. Her complaint alleged discrimination in employment on the basis of sex, and constructive dismissal from her employment.

During the investigation, the employer denied the allegations, and said that the complainant had had a poor work record. However, the Commission had contacted five former female co-workers who stated that the respondent had made similar verbal and physical advances towards them. All cited the harassment as the reason for leaving their jobs. Once this evidence was brought out, the following items of settlement were agreed to among all parties during conciliation discussions:

- the respondent agreed to send a memo to staff, outlining the company's policy against sexual harassment and other forms of discrimination,
 - the complainant received a cheque for \$3,800.00, of which \$2,200.00 represented compensation for earnings lost due to discrimination, and \$1,600.00 as compensation for insult to her dignity.
-

A woman alleged that she was laid off from her position as a security guard in a large manufacturing firm after six months of employment. Although her employer had told her that several employees had been laid off due to work shortages and a budget cut, she alleged that two male guards with less seniority than she had were later recalled. She filed a complaint alleging discrimination in employment because of sex.

During the investigation, the Human Rights Officer asked the complainant to provide additional information about her allegations, and to inform the Commission about any inquiries she had made about the matter to the company's personnel manager and her union representative. However, in spite of the fact that registered letters were sent to the complainant, and telephone messages left, she did not respond to the Commission's inquiries.

Accordingly the complaint was dismissed under Section 33(1)(b) of the Code because the complainant appeared to be disinterested in the complaint procedure and outcome.

Handicap

A man with an epileptic condition had worked for the respondent since 1976. He alleged that until August of 1982, he encountered no problems that were associated with his epilepsy, but one day he had a seizure which caused him to black out and fall to the floor. He believed the seizure to have been caused by a low dilantin level, and that an increase in his medication would eliminate the seizures. Shortly thereafter, his employer removed him from his position as a brazer/welder to a non-classified position in the warehouse. The complainant felt that the move would threaten his job security and affect his seniority rights. He filed a complaint with the Commission alleging discrimination in employment because of handicap.

Investigation revealed that this had been the first time the complainant had suffered a seizure at work. The employer's main concern was with the safety of the complainant, since his job involved working with a blowtorch. The respondent also said that the complainant's security of employment and seniority rights were not threatened.

During the Fact Finding Conference, the respondent stated that the company was to make the necessary changes to the work area in order to make it safer for the complainant to work, as long as the complainant was prepared to cooperate and agree to wear the required protection, such as a leather apron and a face mask to prevent him from being injured by the flame from the torch. Prior to this, the respondent wanted an independent medical report on the complainant's medical condition, for which the company was prepared to pay the cost.

The complainant then said that he was quite prepared to stay on the job he presently had as long as he had job security and maintained his seniority. This was agreed to by the respondent in conciliation. The issue was raised of what would happen to the complainant if he was "bumped" by someone with more seniority in the event of a lay-off situation. The logical place for the complainant to go in such a situation would be to use his seniority to "bump" into the stainless steel/furnace area. Because of safety considerations, the Commission viewed the area. The Commission and the respondent agreed that if some additional guards were built, an action which appeared necessary for the protection of all employees, then the area would be safe for the complainant to work in. This accommodation could be made without causing undue hardship in terms of costs to the respondent.

As a further means towards resolving the complaint, an additional proposal was agreed to: the respondent and the complainant, with the assistance of a member of the union executive, agreed in principle to define, as much as is possible and practicable, those job functions which may or may not put the complainant at risk in light of his epileptic condition.

Age

The complainant, a 56-year-old male, alleged that he had worked as a salesman for his company from 1947 to 1964, at which time he was promoted to a supervisory position. In 1980, the company was purchased by the respondent. Shortly after the takeover, the complainant's services were terminated by the new sales manager. He filed a complaint with the Commission alleging discrimination in employment because of age.

During investigation, the evidence indicated that the new management had cut back the number of supervisory personnel for economic reasons. Out of the four supervisory positions in the company, it was decided to make the complainant's position redundant. The sales manager said that the complainant's performance as a supervisor had been less competent than that of the three supervisors who were retained.

However, the Commission interviewed other company representatives, who claimed that the complainant had been an effective supervisor and loyal employee. Some felt his release was related to his age. An examination of personnel records revealed that, of the four supervisors, the complainant had been consistently evaluated as the best of the four. He was said to have high management potential. The ages of the other three supervisors were 33, 37 and 44.

In conciliation, this evidence was reviewed with all parties to the complaint, who agreed to the following items of settlement:

- reinstatement of the complainant to a position similar to his former position without loss of seniority or vacation credits,
 - compensation to the complainant in the amount of \$6,200.00 for earnings and benefits lost due to discrimination,
 - written assurances to the Commission of the company's policy of non-discrimination and posting of Human Rights Code cards on the business premises.
-

A 57-year-old man filed a complaint alleging that two years before, his former employer had refused to transfer him to another department because of his age. However, he did not contact the Commission at that time, and later left the company of his own accord for other employment. The Commission's inquiries determined that his main concern appeared to be a salary freeze applied to all employees in his present firm.

The Commission reviewed the case under Section 33(1)(d), which empowers it to refuse to deal with a complaint if the facts on which it was based occurred more than six months before it was filed. The Commission decided to dismiss the case because the delay in filing did not appear to have been incurred in good faith, and the Commission believed that substantial prejudice would result to the company if the complaint proceeded.

Creed

The complainant began employment as a shipper/receiver with a manufacturing firm. Because of his religious beliefs, his employer agreed to allow him to take off eight obligatory holy days as vacation time during his first year of employment. In the second year, however, he alleged that the respondent told him that, because of new scheduling requirements, it would no longer be possible for employees to split up their vacation periods, and that any leave for religious reasons would be treated as a leave of absence without pay. When the complainant returned from his first religious holy day, he was told that he had been dismissed. He filed a complaint with the Commission, alleging discrimination in employment because of creed.

In the Fact Finding Conference, the Commission pointed out that if the result of applying a general employment regulation is to exclude members of a religious group, discrimination has occurred unless the employer can demonstrate that the regulation is reasonably necessary to the business operation. The employer stated that his business would suffer if the complainant's duties were not carried out on a day-to-day basis, but he did agree that he could assign another worker to those duties occasionally, if he had sufficient notice.

Accordingly, the following settlement was reached in conciliation:

- immediate reinstatement of the complainant to his former position,
- monetary compensation in the amount of \$750.00 representing earnings lost due to discrimination,
- agreement that the complainant would be allowed absences from work, to be taken as vacation, in order that he may observe up to 10 holy days each year. The complainant agreed to provide the employer with at least three months' notice of any planned religious absences.

Reprisal

In 1981, the complainant, a part-time restaurant helper, had filed a complaint with the Commission alleging racial discrimination on behalf of an East Indian co-worker. The management of the company had responded to the complaint by accusing the complainant of being irresponsible and of expressing personal opinions with no basis in reality. They had further said they could not accept these "amateur legal activities" of the complainant.

The following year, the complainant went on vacation for the summer and, as she had done the previous year, applied for re-employment in September. This time she was told she would not be rehired because she "constantly complained." She filed a complaint with the Commission alleging reprisal action for taking part in a complaint under the Code.

During investigation, the respondent maintained that the complainant was not rehired because she was always complaining about the company, the work and her fellow employees.

However, the complainant's allegations were supported by the evidence. The investigation into the race complaint had revealed a disturbing situation and her complaints to management were actually acted upon and brought about general improvement at the work place.

The Commission had evidence that there had been no criticism or concerns about the complainant's attitude or performance until after she had made the complaint to the Commission.

In conciliation, the following items of settlement were agreed to:

- \$200.00 in compensation for earnings lost due to discrimination, and \$750.00 in compensation for insult to dignity,
- an offer of the next available job for which the complainant qualified,
- an agreement on the part of management that they would institute a grievance policy for employees, in order to resolve problems, and to dissipate any fears of retaliation against employees who take part in a complaint under the Code.

HOUSING

Race, Ethnic Origin

A Native Indian woman telephoned in response to a newspaper advertisement for an apartment for rent, and made an appointment with the owner to view the accommodation. She alleged that when she arrived at the address, the owner asked her where she came from. When she replied that she had been living on a nearby reserve, the owner refused to show her the apartment, claiming that he had experienced problems with other Native Indian tenants in the past. The woman's complaint alleged discrimination in housing accommodation because of race, colour and ancestry.

Shortly thereafter, a black family visited the same apartment building after seeing a newspaper advertisement. They alleged that when they asked to see the unit, the owner told them, "I don't rent to blacks." They filed a complaint with the Commission alleging discrimination in housing accommodation because of race and colour.

The respondent's daughter-in-law accompanied him to the Fact Finding Conference and there was agreement among all parties that discrimination as alleged had taken place. The owner's daughter-in-law expressed her sincere apologies to the complainant for the owner's actions, and indicated that she had made him aware of their seriousness. In conciliation, the respondent agreed to write letters of apology to all of the complainants, as well as a letter of assurance to the Commission. The parties received a cheque for \$100.00 in compensation for insult to their dignity. Because both families had located suitable accommodation, the settlement did not include an offer of the next available apartment.

A man who was born in India alleged that he replied by telephone to a newspaper advertisement for an apartment. He was told that several apartments were available, and was invited to view the premises. He claimed that when he went to the apartment building, the rental manager asked him when he wanted to move in. The complainant replied that he wanted the accommodation in one month. He alleged that the manager told him that there was nothing available that soon, but he was not asked to leave his name or fill out an application form. He also noticed that the same advertisement ran for several days after his inquiry. He filed a complaint with the Commission alleging discrimination in housing accommodation because of race, colour, ancestry and place of origin.

The investigation revealed that the respondent company had recently purchased two apartment buildings, both of which were undergoing renovations. Only half the suites were ready for occupancy, and there were no vacancies available on the date which the complainant specified. The rental manager also told the Commission that the company was reluctant to rent apartments to persons who wanted them on short notice, believing that if they had not given their present landlord the required two months' notice, they might not be responsible tenants. In addition, the company assumes that persons who want to be considered for a later occupancy will ask for an application form.

The Commission also learned that of 150 occupied apartments, 27 were rented by non-white tenants. None of them reported having experienced any discrimination by the property management. Also, the newspaper had a contract with the respondent to run the ad at a reduced rate for six months.

These findings were reviewed and discussed in a conciliation meeting involving all parties. It was agreed that the rental manager had treated the complainant in a cursory manner, which led him to believe that discrimination had taken place. He was satisfied with the investigation findings, and the complaint was settled on the basis of written assurances from the respondent that he acted in compliance with the provisions of the Code.

Sex, Marital Status

A woman alleged that shortly after moving into a new apartment, the landlord, who also lived in the building, began to make sexual advances towards her. When she made it clear to him that these approaches were unwelcome, he threatened her with a 50 per cent rent increase and told her that if she was not prepared to pay it, she would be evicted. She filed a complaint with the Commission alleging harassment by the landlord on the basis of sex and denial of equal treatment in housing accommodation because of sex.

After the landlord was served with the complaint, he indicated that he wanted to enter conciliation immediately. In conciliation negotiations, the landlord rescinded the eviction order and lowered the amount of the rental increase. He provided the complainant and the Commission with assurances that he would fully comply with the provisions of the Code in future.

A 22-year-old single male telephoned in response to a newspaper advertisement for a two bedroom apartment and was invited to view the accommodation. He alleged

that the rental agent asked his occupation, and he replied that he was a university student. The agent stated that it was management's policy not to rent to single students. The complainant was not asked to produce any evidence of his financial status or a reference from his previous landlord. He filed a complaint with the Commission alleging discrimination in accommodation because of age and marital status, because he believed that a policy against renting to students adversely affected persons aged between 18 and 25.

The Commission contacted the owner of the building, who confirmed the existence of the policy. The respondent requested that conciliation negotiations be entered into immediately. In conciliation, the respondent agreed to inform all staff that the policy has been abolished, to invite the complainant to apply for the next available rental accommodation, and to compensate him in the amount of \$150.00 for out-of-pocket expenses incurred as a result of discrimination. In addition, he agreed to send the Commission written assurances of the company's policy of non-discrimination and to post Human Rights Code cards in all of his apartment buildings.

Handicap

The complainant, who is in a wheelchair, attended the respondent university. She alleged that she had spent her first two years as a non-resident student, and wished to complete her degree in residence. However, she was unsuccessful in her application for accommodation in residence. She was told that no renovations had been made for female students with a handicap. All remodelled accommodation for disabled students was on the main floor and it was all occupied by males. The complainant's suggestion that the respondent turn the main floor into a co-ed floor was rejected.

The respondent alleged that renovations had always been at the request of the Vocational Rehabilitation Services, which supplied the necessary funds on behalf of its clients. Although Vocational Rehabilitation Services stated in a letter that it would be beneficial for the complainant to be in residence, it did not say it was necessary for her to do so in order for her to continue her education, since she was able to commute to her classes.

During the investigation, the respondent stated that fire regulations compelled the university to confine residents in wheelchairs to the first and second floors. At the time in question, all renovated rooms on these floors were occupied by males. There were two females in wheelchairs on the fourth floor, but their rooms had not been modified. The complainant was the first woman to request specialized residential accommodation at the university. The respondent also explained that making the first and second floors co-ed was a decision to be taken in conjunction with the student committee, whose members had been away for the summer when the complainant suggested making the first floor co-ed. The complainant stated that much of the information mentioned at the Fact Finding Conference had never been explained to her.

As a means of resolving the complaint, the following proposals were agreed to:

- the complainant would be provided with residential accommodation as of May 1983 until such time as she has completed her degree,

- the complainant would provide a letter from a competent authority indicating that living in residence would be beneficial to her studies,
- the respondent would provide appropriate accommodation for disabled female students in accordance with the demand ratio,
- the respondent provided the Commission with a letter of assurance of its policy to comply with the provisions of the Code.

SERVICES AND FACILITIES

Race, Ethnic Origin

A black woman alleged that a Grade 8 substitute teacher had made a racist remark to her daughter following a class. She filed a complaint with the Commission on behalf of her daughter, alleging discrimination with respect to services and facilities on the basis of race, colour and ancestry.

The Commission's officer discussed the complaint with the teacher concerned and the principal. The teacher admitted making the comment.

In conciliation, both the teacher and principal agreed to write letters of apology to the student, and the principal reprimanded the teacher for her conduct. In addition, the principal requested the school board not to send the teacher to his school again, and the board undertook to monitor her teaching performance in any other school to which she will be assigned.

A black man and his wife, who was white, visited a hotel at which he had been a guest on numerous occasions over past years. They were accompanied by a black male friend and his white fiancee. He alleged that as they approached the restaurant, a hotel employee informed them that black persons could not be served, but that the two women were welcome. Both couples left, and the next day, they filed a complaint with the Commission alleging discrimination with respect to services and facilities because of race and colour.

During investigation, the hotel manager stated that the hotel had recently changed owners, and the new management had instituted a policy to refuse service to undesirable persons, regardless of their race, in order to ensure that the business would not suffer. He claimed that white persons were refused service as often as black persons.

However, the complainant provided the names of a large number of witnesses both white and black, who confirmed the existence of a "whites only" policy at the hotel. The manager finally admitted that such a policy had been in effect, but denied that he had initiated it. In conciliation, the parties agreed to:

- a written declaration by the respondent to the Commission and to all hotel employees that

exclusionary practices on a basis of race would not be tolerated, posting of Human Rights Code cards on the premises, and a written apology to the complainant and his wife, and to the other couple,

- compensation to the complainant in the amount of \$300.00 for insult to dignity.

Handicap

The complainant, a man in a wheelchair, alleged that he applied to his city's special bus service for the handicapped for transportation to the university, which is 20 kilometres from his home. He was informed that the buses went to and from the campus only two mornings a week. The regular transit service, however, made daily runs to the university. The special service could make unscheduled trips, but at a cost of between \$20.00 and \$40.00 an hour. The man filed a complaint with the Commission alleging discrimination with respect to services and facilities because of handicap. His complaint also cited the difficulties which handicapped persons experience in finding affordable transportation on evenings and weekends.

The respondent explained that the two transit systems are separate systems. One is a route system while the special system is a door-to-door service for those who cannot use the regular service. The respondent has a planning committee that includes four handicapped members. The committee discusses any problems, complaints and suggestions to improve the bus service. The respondent alleged that it would be impossible to run the special system for the same amount of hours as the regular system, because of both low customer demand and cost factors.

During the Fact Finding Conference, the respondent agreed that the hours of the special transit system are inconvenient for many of its users. As a means towards resolving the complaint, the following proposals were agreed to:

- fares for the special system will be the same as the regular transit,
- a full users survey will be conducted to see if a need exists for Saturday service and arrangements will be made to extend the hours of the bus service by one hour on Thursday evenings to enable individuals to attend a show or other outings,
- pamphlets about the service will be distributed to Chamber of Commerce members and the name of the service and phone number will be painted on the buses,
- a two-way radio will be installed in the buses, to expedite information to the drivers about changes in routes or schedules,
- if a substantial number of people request transportation to the university, the committee will consider scheduling more frequent trips there.

DECISIONS OF BOARDS OF INQUIRY

1982-83

Aragona and Elegant Lamp Company Limited, Fillipitto

Mrs. Aragona's complaint alleged several incidents of sexual harassment on the part of Mr. Fillipitto, the plant manager in the company where she had worked for 10 months. She claimed that the harassment created a demeaning work atmosphere, and caused her to resign her position. Her complaint alleged discriminatory terms and conditions of employment and dismissal from employment because of sex.

During the hearing, Mrs. Aragona told the inquiry that she quit her job following a meeting with the president of the company, at which she raised these allegations with him for the first time. She said she was given no indication that anything would be done in response to her allegations.

Employees of the respondent testified that the work atmosphere at the company was generally pleasant and cheerful, with Mr. Fillipitto and his staff frequently exchanging banter and teasing, often with sexual connotations. These witnesses said that Mrs. Aragona apparently did nothing to discourage this conduct. Based upon the evidence, the board concluded that there was no suggestion of coercion of Mrs. Aragona to reciprocate a social relationship.

It was the board's opinion that sexual references that are crude or in bad taste are not necessarily sufficient to constitute a breach of the Code. The board stated that conduct of a subtle nature must be evaluated in accordance with an objective standard, and it was found in this case that the proven conduct was freely accepted and enjoyed by the other employees. Thus, the board chairman stated that the behaviour complained of "could not reasonably be perceived to create a negative psychological and emotional work environment," and the complaint was dismissed.

Bains and Ontario Hydro

Mr. Bains, a 40-year-old man of Indian origin, alleged that he was refused employment as a welding technician with Ontario Hydro because of race, colour, nationality, ancestry, place of origin and age.

He claimed that he filled out an application form and was then called for an interview. Evidence introduced at the board hearing indicated that the application form asked his date of birth, and his reply was circled on the form. Mr. Bains stated that during his job interview, he was told that most junior level technicians were younger than he was. He was then asked if he would be able to adjust to working with that kind of group, given his past experience and maturity. Mr. Bains replied that he didn't see any problems.

The board heard further evidence from representatives of the respondent regarding the screening process and the qualifications of the other applicants for the position. On the basis of the totality of the evidence, the board found that the employer did not intend to discriminate against Mr. Bains because of his age, nationality or place of origin. Rather, the evidence indicated that the respondent had some concern about Mr. Bains' ability to adapt to living in a camp environment with younger men while at the same time adjusting to a change in his vocation.

Additional evidence revealed that the employer had selected a more highly qualified candidate for the position.

The complaint was dismissed.

Ballantyne and Molly 'n' Me Tavern

Ms. Ballantyne applied for employment as a waitress with the respondent tavern. Her complaint alleged that she was not hired because she refused to wear a topless costume while waiting on tables, a condition that was not required of male employees performing the same duties.

At the hearing, the respondent argued that the dress requirement did not discriminate with respect to conditions of a job held by both males and females. Rather, it created a new job category, available only to females.

The board of inquiry did not support this argument, on the grounds that the establishment of separate job descriptions in order to immunize an employer from an allegation of discrimination would undermine the purpose and provisions of the Code. In addition, the board chairman stated that an employer should not be permitted to convert female occupants of traditional service and clerical job categories into entertainers through a requirement that they wear immodest clothing.

The board did recognize that conditions of employment may exist that have a provable and substantial commercial objective, that the entertainment aspect of the job is essential to it, and that only members of one sex can provide such entertainment. This was not found to be the case in Ms. Ballantyne's situation.

The complaint was upheld. The board found that where males and females occupy the same position of employment, the imposition of a more burdensome requirement on female employees relating to dress or appearance constitutes discrimination under the Code. The respondent was ordered to pay the complainant the amount of \$222.00 representing loss of employment opportunity, and \$100.00 in compensation for insult to her dignity.

Bosi and the Township of Michipicoten

Mrs. Bosi alleged that she was refused employment in the accounts department of the Township of Michipicoten because her husband was a member of the Township's police force. Believing that the employer's hiring policy had a more serious impact upon women than men, she filed a complaint under the former Human Rights Code alleging discrimination in employment because of sex and marital status.

The board found that the employer had taken into account the complainant's marriage to a Township employee. However, evidence indicated that the duties of the job in question involved processing expense account claims and handling sensitive documents relating to all Township functions. Therefore, the policy regarding marriage between employees was found to be reasonable and bona fide, since it was designed to avoid a potential conflict of interest among members of staff.

Because the complaint also alleged discrimination because of sex, the board addressed the question of whether the establishment of a policy against hiring

spouses of employees would affect women more adversely than men. The board observed that the Township had no blanket anti-nepotism rule, and it found no evidence that in cases such as this one, the policy would affect females more than males. The complaint was dismissed.

Bruton, McInnis and M.G.H. International Limited

The two complainants alleged that they had applied, through an employment agency, for positions as industrial nurses with M.G.H. International Limited. It was to be a job-sharing arrangement with each woman working 20 hours a week.

On the first day of work, Mrs. McInnis reported for duty to a first aid trailer near the company's construction site. Evidence indicated that the first day proceeded uneventfully, with five men being treated for minor ailments. On the second day, Mrs. Bruton worked her shift, and, like Mrs. McInnis, was instructed to send her patients back to the job site as quickly as possible, and not to socialize with the construction workers. Both women were complimented on their work performance at the end of their shifts.

The following day, Mrs. Bruton alleged that she was informed that both nurses were being replaced by a full-time male paramedic. She claimed that she learned that company management felt attractive female nurses would be disruptive and would interfere with the workers' productivity. The two women filed complaints alleging discrimination in employment because of sex.

During the hearing, company representatives claimed that the decision was based on a concern that the women would be at risk on a remote construction site. They also claimed that the company wanted to hire a less qualified male paramedic in order to save money.

The board found, however, that the wages paid to the new male employee were considerably higher than those paid to the two nurses. The board also determined, on the basis of the evidence, that workers' productivity had not decreased because of visits to the nursing station during the three days of the complainants' employment. Nor was any evidence produced that sex was a bona fide occupational qualification or requirement for the position in question.

The complaints were upheld. The respondent was ordered to pay to each complainant the sum of \$3,090.00 in compensation for lost earnings and injury to dignity, and to post Human Rights Code cards on all of its business and construction sites in Ontario.

Iancu and Simeoe County Board of Education

Mr. Iancu, a man of Rumanian origin, had been employed as a teacher in one of the schools of the respondent for a two-year probationary period. During the spring term of his second year, he alleged that he was informed that he was not being recommended for a permanent contract with the respondent Board. Mr. Iancu believed that the main reason for his dismissal was because he was not of Franco-Ontarian descent. The school is in Penetanguishene, a community with a large Franco-Ontarian population. He therefore filed a complaint against the school Board alleging discrimination in employment because of nationality, ancestry and place of origin.

During the hearing, the board heard testimony from staff of both the school and the Board of Education. In the view of the board of inquiry, the evidence indicated that although Mr. Iancu's performance as a teacher was good during his first year of teaching, it had deteriorated to such a degree in the second year that a large number of students were withdrawing from his classes.

The board found no evidence of discrimination against the complainant by the school principal or the trustees of the Board of Education. However, it was the board's opinion that the principal did not comply with school Board policy to give a reasonable warning to the complainant regarding his work performance, and a reasonable time in which to rectify the problem. The inquiry chairman stated that although the complainant was aware of this problem, he had not received reasonable notice of its seriousness from the standpoint of his achieving permanent status as a teacher. The complaint was dismissed.

Jones, Lindo, Paris and the Municipality of Metropolitan Toronto, Cluff, Malley

The three black complainants alleged that they were discriminated against at a public golf course in Toronto, because of their race and colour.

Their complaints alleged that as they approached the first tee, the starter sent a fourth player, who was white, to join the group. The complainants said they did not want a foursome and an argument between them and the starter took place. The three men alleged that on leaving the club, the golf pro told them, "This will be the last time you blacks play at this golf course."

During the hearing, the respondent testified that the three men had been told that it was a club rule that on busy days, groups of four must play. If a group of two or three insists on playing alone, they may do so, but they must wait until all the foursomes have gone ahead of them. The complainants claimed that they had been unaware of this rule.

Evidence heard by the board indicated that persons of all racial backgrounds played at the club. The chairman accepted the evidence of the respondent that the foursome rule is a common practice at busy public courses. The complaints were therefore dismissed.

The board chairman observed, however, that the club's rules should be more clearly displayed, in order to avoid any misunderstandings about them.

McPherson, Ambo, Morton and 408720 Ontario Limited ("Mary's Donuts"), Doshoian

The three complainants alleged that they were subjected to sexual harassment by the owner/manager of the respondent company. They claimed that they were subject to his sexual advances as a condition of employment, and found it impossible to continue working for him. They resigned their positions and filed complaints with the Commission alleging discriminatory terms and conditions of employment and constructive dismissal from their jobs on the basis of sex.

At the hearing, other former employees of the respondent and several additional witnesses corroborated the evidence of the complainants. The respondent alleged that they had resigned because they objected to his criticism of their work performance. The board found no difficulty in believing the testimony in support of

the complaint allegations: "Even though Mr. Doshoian knew that the complainants objected to his sexual advances, he persisted in his attempts and made their subjection to his conduct a term or condition of their employment." Moreover, the board found a causal connection between the harassment of the complainants and their loss of employment opportunity.

The board ordered the respondent to cease and desist from the sexual harassment of its employees. It also ordered that Mrs. Ambo receive the amount of \$2,500.00 in compensation for insult to her dignity and \$75.00 representing earnings lost due to discrimination, Ms. McPherson receive \$1,000.00 in compensation for mental anguish and \$500.00 in compensation for lost earnings, and Mrs. Morton receive \$500.00 in compensation for mental anguish.

Rand, Canadian Union of Industrial Employees and Sealy Eastern Limited

Both Mr. Rand and his union alleged that he was dismissed by the respondent for refusing to work on Saturdays. As an orthodox Jew, his religion prevented him from working on the sabbath, an obligation he claimed his employer was aware of when he was hired a year before.

In his complaint, Mr. Rand alleged that a new plant manager asked him to work overtime on Saturdays, in order to undertake further training. He asked to work evenings or Sundays instead, but Sealy refused and offered him an alternative position that would not involve work on Saturdays. When Mr. Rand turned it down, he was dismissed. His complaint alleged discrimination in employment because of creed.

During the hearing, respondent witnesses claimed that the employees who were to train Mr. Rand could do so only on Saturday. The complainant and a union representative testified, however, that the additional training program was not necessary because his work performance was competent.

With respect to the offer of alternative employment within the plant, Mr. Rand testified that the position would be unsuitable because it was physically demanding and he had once suffered a back injury.

On the basis of the evidence, the board concluded that there was no business necessity to hold the training program on Saturdays; it could have taken place during or after regular working hours. It was the board's view that the plant manager did not want Mr. Rand on staff, and knowing of his inability to work on Saturdays, made an arrangement which he knew Mr. Rand would be unable to accept.

The board decided that the requirement to work on Saturdays had a discriminatory effect on the complainant. The respondent was ordered to reinstate Mr. Rand, with no loss of seniority, and under no conditions that would be incompatible with his religious beliefs. In addition, the board ordered the respondent to pay the complainant the amount of \$1,500.00 in compensation for insult to his dignity.

Rawala, Souza and the DeVry Institute of Technology

Two students of East Indian origin had been involved in a cheating episode with a third student, who was white. They alleged that they were punished more severely than the white student, and believed that this treatment was based upon their racial

and ethnic origin. They filed a complaint with the Commission alleging discrimination with respect to services and facilities because of race, colour, nationality, ancestry and place of origin.

During the hearing, the respondent claimed that the Commission lacked jurisdiction in these complaints because its services were not public, within the meaning of the former Human Rights Code. The board reviewed evidence on the issue, and decided that DeVry was a public service or facility, on the following grounds:

- The college advertises its services and facilities broadly in the mass media.
- At DeVry, the screening and selection of applicants is based on universal, non-personal considerations.
- DeVry's admissions criteria are not used to establish an exclusive or private institution. Rather, the criteria are designed to permit the students to take successful advantage of the services and facilities offered.
- A private source of funding, rather than public, is not sufficient to bring a service or facility beyond the reach of the Code.

The board then turned to the evidence on the allegations. The college's manual of administration outlined disciplinary measures for the type of breach which the three students had committed. College officials testified that an internal investigation had revealed that the two complainants' roles in the cheating episode constituted a more serious offence than that of the third student, and it was college policy to impose a more serious penalty for the type of misconduct in which the complainants had been involved.

The board found that the differential treatment was not related to discriminatory factors, and the complaints were dismissed.

Styres and Paiken

Ms. Styres, who is a Native Indian, learned of a vacant two-bedroom apartment through friends who lived in the respondent's building. She alleged that she and a friend went to the rental office to inquire about the accommodation. They agreed to rent the unit for \$165.00 a month, and paid a \$20.00 deposit to hold it. With the superintendent's permission, they bought cleaning supplies and spent a day cleaning the apartment.

The complainant claimed that the two women moved into the apartment the following day. Having done so, they went to the rental office to pay the balance of the first month's rent plus half the last month's rent, as had been agreed. The superintendent introduced them to the building owner, Mr. Paiken, who said he wished to discuss the terms of the agreement with them in the new apartment, which was by now clean and furnished. Ms. Styres alleged that Mr. Paiken then asked the women if they were Canadian Indians. When they replied that they were, he said that he didn't want to rent to Indians because of bad luck with an Indian tenant in the past.

When the two women accused him of prejudice, he agreed to rent them the unit on the condition that they pay him two months' rent in advance and provide him with the names of two highly respectable citizens who would pay their rent if they fell in arrears. Ms. Styres said that although she could meet these conditions, she was so humiliated by the encounter that she and her friend moved their furniture out of the apartment the following day. Ms. Styres then filed a complaint with the Commission alleging discrimination with respect to housing accommodation because of race, colour and ancestry.

During the hearing, several tenants stated that similar conditions of occupancy had not been imposed upon them. The complainant testified that she was never asked about her income, ability to pay, or prior record as a tenant. The respondent did not deny the complaint allegations during his testimony.

The board decided that the evidence clearly established that the respondent had imposed different terms and conditions of occupancy on the complainant because she was a Native Indian. The respondent was ordered to pay the complainant the sum of \$500.00 in compensation for insult to her dignity, and \$90.00 representing out-of-pocket expenses incurred because of discrimination. In addition, Mr. Paiken was ordered to send a letter to the Commission indicating his awareness of, and intention to comply with, the provisions of the Code.

Suchit and St. Joseph's Health Centre

Mr. Suchit, a man of East Indian origin, alleged that he was refused employment as director of a new detoxification centre because of race, colour, ancestry and place of origin. He had responded to a newspaper advertisement for the position, and was interviewed. Mr. Suchit claimed that much of the interview centred on issues concerning his race and his ability to handle situations involving clients of various racial backgrounds. He said he was asked whether his former supervisor, his main reference, was Canadian.

During the hearing, the board learned that the hospital's usual screening procedures were not followed in Mr. Suchit's case. While applicants were customarily screened and interviewed by a panel composed of staff from the personnel department and the department which was recruiting candidates, the complainant was interviewed only by a senior hospital official.

Testimony provided by Mr. Suchit's former supervisor revealed that the respondent had asked him questions about Mr. Suchit's ability to handle racial situations. The supervisor considered these questions to be irrelevant, and he said he was taken aback by them.

Mr. Suchit told the inquiry that he had reported his concern to hospital officials in order to give them the opportunity of conducting an internal investigation into his allegations. When he heard nothing from the hospital following two follow-up inquiries, he filed a complaint with the Commission.

The successful candidate for the position for which Mr. Suchit applied stayed in the job only three months. The position was not readvertised; a current hospital employee was appointed to fill it. Hospital officials testified that they did not consider offering the job to Mr. Suchit even though he had been their second choice during the first round of screening.

The board examined the qualifications of the complainant and the successful applicant, and found them to be roughly equal. Nevertheless, evidence indicated that the hospital checked Mr. Suchit's references, but did not check those of the applicant they hired until after they had offered him the job. In the opinion of the board, the employer's behaviour indicated an intent to discriminate against Mr. Suchit on the basis of his race, colour, ancestry and place of origin.

The board ordered the respondent to pay the complainant the sum of \$3,350.00 in compensation for earnings lost due to discrimination, and \$750.00 for insult to his dignity. In addition, the board of directors of the respondent were ordered to undertake an investigation of its hiring procedures, in consultation with the Commission.

Torres and Royalty Kitchenware Limited ("Queen's Choice"), Guercio

The complainant alleged that during her employment as a secretary with the respondent, she had been verbally and physically harassed by the owner/manager, Mr. Guercio. She claimed that he had dismissed her for resisting his advances after four weeks of employment. Her complaint alleged discrimination in employment because of her sex.

During the hearing, the respondent denied the allegations, but the board accepted the evidence of the complainant and several other former employees who testified on her behalf. The evidence indicated that the respondent hired young female secretaries, submitted them to continuing sexual advances, and eventually fired them if they refused these advances.

The board ordered the respondent to pay the complainant the sum of \$1,000.00 in compensation for "the intimidating, hostile and offensive work environment suffered by her because of the discrimination toward her," and \$500.00 representing earnings lost due to discrimination. The respondent was also ordered to do whatever is necessary to ensure that its employees are not subjected to sexual harassment.

ROLE AND ACTIVITIES OF THE
RACE RELATIONS DIVISION

1982-83

In late 1979, the Race Relations Division of the Ontario Human Rights Commission was formally established to replace the Community, Race and Ethnic Relations Unit. The Division was given a statutory mandate in the new Human Rights Code when it came into effect on June 15, 1982.

The functions of the Race Relations Division, as related to race, ancestry, place of origin, colour, ethnic origin or creed, are set out in section 28(f), (g) and (h) of the Code as follows:

- to enquire into incidents of and conditions leading or tending to lead to tension or conflict based upon identification by a prohibited ground of discrimination and take appropriate action to eliminate the source of tension or conflict,
- to initiate investigations into problems based upon identification by a prohibited ground of discrimination that may arise in a community, and encourage and coordinate plans, programs and activities to reduce or prevent such problems, and
- to promote, assist and encourage public, municipal or private agencies, organizations, groups or persons to engage in programs to alleviate tensions and conflicts based upon identification by a prohibited ground of discrimination.

It is noteworthy that, for the first time, the Commission's role in assisting and encouraging other agencies, including municipal bodies, to engage in race relations work, is stated specifically in the Code. The proactive and reactive components of that mandate with respect to responding to community tensions and conflicts, are expressly mentioned.

On May 6, 1982, the Race Relations Division held a very successful open house at the Ontario Institute for Studies in Education. At that event, which was attended by more than 700 people (community leaders and other representatives from different sectors of our society), the Division's strategy document, "Working Together," was formally launched. A film of the same title produced by the Division was shown.

It is hoped that these initiatives have helped to promote the principle that human rights and harmonious race relations can be achieved only through the efforts of all members of the society. It is the key responsibility of the Race Relations Division to constantly seek, with the assistance of others, innovative and effective ways of promoting successful intergroup relations and of addressing the problems of racial prejudice and discrimination.

The climate of race relations in today's Ontario and the initiatives of governments, private organizations and individuals, reflect concern in two problem areas: conflict

and tension at the community level; and concerns about racism within the major institutions of our society, such as schools, the media, business and industry and the criminal justice system.

The Race Relations Division has responded to these concerns through a variety of strategies and policy initiatives that reinforce the spirit and letter of the Human Rights Code. Response has also been sought through research aimed at developing a better understanding of specific issues and problems.

ACTIVITIES, 1982-83

Community, Race and Ethnic Relations

The Race Relations Division devoted much of its resources to improving the race relations climate at the neighbourhood and community levels during the fiscal year.

In response to concerns regarding the high youth unemployment rate in particular locations in Metropolitan Toronto, and its disparate impact upon the visible minority youth living in those areas, the Division expanded its special Summer Youth Employment Program with the assistance of the Ministry of Labour and various community and agency representatives.

The program, funded by the Ontario Youth Secretariat through its Summer Experience program, was expanded from the previous year to include the community of Jane-Finch in the City of North York and Regent Park in downtown Toronto. Some 100 "disadvantaged" young people from various racial backgrounds were matched with employers in both the private and public sectors and provided with an eight-week first-time summer job experience.

Among the unique features of the program was the provision for in-service job and life skills training. Because of the success of the program in 1982, it is being continued this summer and plans are underway to increase the designated areas to include the Birchmount-Finch community in Scarborough.

The Ontario Youth Secretariat, heartened by the success of the program, approached the Division in the spring of 1983 to explore the possible expansion of the program to include additional employers.

At the suggestion of the Division, the Metropolitan Toronto Police agreed to model a youth employment program after the Division's Summer Youth Employment Program. It is being funded by the Ontario Youth Secretariat. Some 35 youths from various racial and ethnic backgrounds will be placed with the Community Programs sector of the Metropolitan Toronto Police to work, under the supervision of police, with the seniors population. The youths will be selected from areas of the city with a high summer youth unemployment population. They will participate in a first-time job experience combining employment with job and life skills training. The Municipality of Metropolitan Toronto and the Seniors' Volunteer Agency Network have assisted in the program.

In response to an increase in community tensions in the Caledon Village condominium community, City of North York, the Division established an inter-governmental task force, comprised of representatives of all levels of government, to work with the condominium board of directors and residents to reduce these tensions. A key objective is to develop responsive condominium management procedures to ensure

the smooth and effective functioning of the units from both a financial and social perspective.

Also in the City of North York, the Division, the Municipality of Metropolitan Toronto and the City of North York have been working together to assist in improving the race and ethnic relations climate in various communities in the area. Through such initiatives as assigning community development workers to neighbourhoods, a number of coalitions have been created to respond to the respective issues and concerns.

When conflicts developed within the Sikh community in Metropolitan Toronto, the Division convened a series of meetings with the leaders of the community with a view to assisting them to resolve the internal disputes that had led to a few unfortunate incidents among several of its members. As a result of the Division's intervention, with the assistance of the police and the Attorney-General, efforts are under way among the Sikh leadership to promote intra-community harmony and to achieve an overall improvement in relations between the Sikhs and the community at large.

In the Borough of Scarborough, the Division co-sponsored a youth conference with the Tropicana Community Services Organization of Scarborough in order to listen first-hand to the concerns of minority youth in that community. Some 150 youths participated in the day-long event, and spoke about such subjects as education, youth employment, family and community participation and police/youth relations. Also participating were numerous agency and institutional representatives, who were able to identify issues and seek solutions that would assist them to improve race relations among the youth and the community at large.

In addition, the Division has provided assistance to the Parkdale Inter-cultural Council, the Chinese Canadian National Council, the Ministry of Citizenship and Culture and the Metropolitan Toronto Committee on Race Relations and Policing, through its representation on their conference planning committees.

In Windsor and contiguous areas, Division staff have been successful in stimulating both community and institutional responses to address race relations problems in that area. Several organizations have been formed, and they are conducting race relations programs in their respective communities. They include the Windsor Urban Alliance on Race Relations, the local chapter of the National Black Coalition of Canada and the Windsor West Indian Association.

At a recent open house in Windsor, sponsored by the Division, some 130 persons attended to hear presentations on race relations issues and to reaffirm the need for the support of different agencies and the community as a whole.

In Kitchener-Waterloo, the Division, working with various agencies and community organizations, formed an ad hoc community relations network to deal with racial tensions in the two cities. This group was formed in response to conflicts that developed when some South Asian families were being harassed by a number of youths. By coming together to organize and coordinate program delivery in the neighbourhood, the group was successful in reducing the tension and in establishing a "neighbourhood watch" program. As part of its outreach strategy to other minority groups, the group convened an open meeting, under the sponsorship of the Division, to expand its membership to include a cross-section of minority communities in the area. Some 70 community representatives attended this meeting and participated in workshops on the subject of improving community relations through "networking."

In the Northern Region, the Division has been conducting outreach to isolated communities in northern Ontario, with a particular emphasis on Native communities, in order to learn about and examine their concerns and to heighten their awareness of the role and responsibilities of the Commission. On behalf of the Commission, the Race Relations Division prepared a major submission on the effect of Native problems and concerns on the race relations climate in northern Ontario. This submission was presented to the Cabinet Committee on Native Affairs, which is chaired by the Honourable Lorne C. Henderson, Provincial Secretary for Resources Development. As a result of this initiative, the Commission is now represented on the inter-ministerial committee that provides support to the Cabinet Committee.

In the Ottawa area, the Division and the Commission have undertaken several initiatives to deal with race and ethnic relations problems in eastern Ontario. The Commission co-sponsored, with the Ontario Advisory Council on Multiculturalism and Citizenship, a conference entitled, "Know Your Rights," which addressed the new provisions of the Human Rights Code and the mechanisms and programs available to assist the community in this regard. Some 150 community and agency representatives participated in the conference.

In addition, the Division continued to work closely with the National Capital Alliance on Race Relations, which it assisted in forming in 1981. The Commission's staff also worked with the City of Ottawa Committee on Community and Race Relations.

WORKING WITH INSTITUTIONS

Police/Minority Relations

When police/minority tensions developed between minority youths and police in a North York neighbourhood, the Division was instrumental in establishing a Working Group comprising representatives of the police department, the City of North York Mayor's Committee, the Office of the Public Complaints Commissioner, the Metropolitan Toronto Committee on Race Relations and Policing, and the Municipality of Metropolitan Toronto. This group will develop long-term strategies to improve relations between the youths and police in the community. In addition to providing a medium for sharing information and seeking solutions, the group has been developing strategies to break down the mistrust that exists and to facilitate positive police outreach in that area.

In response to changing needs in policing and race relations, the Division has assisted the Metropolitan Toronto Committee on Race Relations and Policing to review its organizational structure and program orientation. It is hoped that this will help the Committee to work more effectively with the police department to improve police/minority relations. This initiative resulted in part from one of the recommendations proposed in a study commissioned by the police department, which examined the organization and functioning of the Metro force. The study recommended a major decentralization to allow for closer interaction between police and the residents they serve.

The Division presented a major brief to the Board of Commissioners of the Metropolitan Toronto Police on the implications of the study, particularly as it addresses race relations and policing in the areas of staff deployment, police training, police recruitment and promotion.

The Division continued to assist in the development of resource materials to be used in police training in race relations. The staff of the Division is preparing a "police/minority relations" section for the proposed police text book on race relations that is being developed by a committee of police departments and the Ontario Police College. This committee developed from a conference on police training and race relations that was co-sponsored by the Ontario Police Commission and the Division.

In addition, the Division continued to conduct in-service training in race relations with various police departments throughout the province.

Municipal Involvement

The Division continued to work closely with the various municipal Community, Race and Ethnic Relations Committees that have been formed in Metropolitan Toronto and other urban centres in Ontario by harnessing these resources when community problems arise. Division staff have drawn upon their guidance and assistance with specific projects and mediations. The Division presented a major brief to the East York Council's Advisory Committee on Multiculturalism and Race Relations, proposing possible areas for race relations project development. The Division also assisted the recently-founded Peterborough Committee to produce its report on race relations. As a result of this report, a race relations coordinator has been appointed by the City of Peterborough.

Media/Minority Relations

In 1982, tensions developed between the management of a radio station and Toronto minority communities when a staff member made some derogatory remarks on the air. The Division, with the assistance of community group members, the Municipality of Metropolitan Toronto and the Ethnic Relations Unit of the Metropolitan Toronto Police, was able to mediate the conflict. As a result of the Commission's intervention in this sensitive matter and the enlightened approach taken by management, an Advisory Board was established, composed of community representatives and staff of the radio station. The Advisory Board is assisting the station to develop greater awareness and sensitivity to the multi-racial and multi-ethnic nature of its radio audience. Various projects are underway to foster improved race relations between the radio station, the minority community and the broader community in general.

In the formation of the Advisory Board, the Division drew upon the expertise and assistance of the City of North York and City of Toronto Committees on Community, Race and Ethnic Relations, Caribana and other community groups. Also assisting was the Ad Hoc Media Group, a coalition of community leaders who are working to improve media/minority group relations.

Social Services Delivery

In Ottawa, the Division's regional office and the Ottawa-Carleton Immigrant Services co-sponsored a workshop which examined the need for integrated policies and practices among the various social service and health agencies and institutions responsible for meeting the needs of minority ethnic groups in the region.

As a result of recommendations arising from the workshop, a task force was struck to implement the proposals that were agreed upon. Similar results were achieved in a cooperative venture between the Division and the Metropolitan Toronto Children's Aid Society.

Correctional Institutions

As a result of reported incidents of racial tensions in correctional institutions, the Division worked cooperatively with the Ministry of Correctional Services to reduce those conflicts and to improve inter-group relations in that system. The Correctional Services Ministry developed a policy on race relations and human rights, which the Commission reviewed. In its implementation of the policy, the Ministry will establish procedures for responding to racial incidents, in consultation with the Division.

Education

A critical starting point in the effort to combat prejudice and discrimination in society is through educational institutions. Therefore, the Division has worked hand in hand with the North York Board of Education and many other boards throughout the province to develop appropriate race relations responses and policies.

In its continuing efforts to sensitize people in the area of education, the Race Relations Division co-sponsored a conference in Windsor with the Windsor Board of Education. The theme was, "Confronting Racism in Schools and Classrooms." Other conferences are planned for different regions of the province.

The Division and the Hamilton Board of Education have co-sponsored a curriculum development project designed for Grades 9 and 10 on the subject of prejudice, discrimination and racism. The purpose of this project is to develop core curriculum materials that will be field-tested in classrooms over a period of two years.

Business and Industry

Human rights education is a process of clarification, sensitization and increasing awareness of the dynamics of discrimination and how to combat it. As such, it has played an important role in many of the activities of the business and industry sector of the Race Relations Division.

As an outcome of formal complaints involving two large employers, the Division conducted two seminars on the topic of race relations issues at the workplace for all management and administrative staff. In a branch of a national retail store, a race relations committee has been set up, which arose from the settlement of a complaint. The Division assisted the committee to deal with race relations problems in that workplace.

The Division also designed a handbook to be used by employers in the promotion of equal employment opportunity and positive race relations in the workplace. The handbook was prepared for management personnel, to assist them to establish equal employment opportunity practices.

Meeting Special Needs

In early 1983, the Division began to develop plans for a provincial Conference on Visible Minority Women. The conference, scheduled for the fall of 1983, is being co-sponsored with the Ontario Women's Bureau. The planning committee has been conducting an intensive series of consultations with various visible minority women's groups and agencies in order to develop the conference agenda.

As a new initiative for fiscal year 1982-83, the Race Relations Division began hosting a series of consultations with minority communities. The main purpose of the consultations is to identify issues and concerns of importance in the communities and to direct these concerns to the appropriate agencies, individuals or institutions for action.

To date, the Race Relations Commissioner and other members of the Division have held two consultations, one with the Filipino Community and another with the Chinese community, in February and March 1983 respectively.

At both consultations the representatives of a wide variety of groups and organizations met with members of the Division to discuss issues and concerns relating to employment, education, housing and social services. Workshop discussions were held and recommendations formulated.

The Chairman of the Filipino consultation was Mr. Tony Anden of the Filipino Cultural Centre. Participants included representatives of the Ontario Advisory Council on Multiculturalism and Citizenship, the Kabayan Community Service Centre and the University of the Philippines Alumni Association.

The consultation with leaders of the Chinese community was attended by over a hundred members representing thirty-four Chinese organizations. Among the organizations were the Chinese Canadian National Council, the Federation of Chinese Canadian Professionals, the Council of Chinese Canadians in Ontario and the Association of the Chinese Community Social Workers.

Similar consultations are being planned with other minority communities such as the Korean, Pakistani, Vietnamese, Black, South Asian, and others. It is expected that in addition to members of the Commission, members of the Cabinet Committee on Race Relations will be present at these consultations.

The Cabinet Committee on Race Relations

The Division continued to assist the Cabinet Committee on Race Relations and its Staff Working Group to respond to current race relations issues and concerns as they relate to the responsibility of the Government of Ontario. The Division assisted the Ontario Manpower Commission and the various ministries responsible for youth employment programs to implement the recommendations of the Cabinet Committees on Race Relations and Manpower regarding youth employment and race relations.

The Division participated as a member of a task force that was given the responsibility of improving visible minority representation in Government of Ontario advertising and communications. After an intensive consultation process with community groups and the advertising industry, and after conducting independent research on the subject, the task force released its report to the Government of

Ontario through its Cabinet Committee on Race Relations. The report focused on the need for the portrayal of racial diversity, and it identified no barriers in the implementation of this policy recommendation. As a result of its findings, the Government established a policy that racial diversity should be represented and it requested the task force, comprising Government communications staff and representatives of the Staff Working Group of the Cabinet Committee on Race Relations, to monitor the implementation of this policy directive.

The task force will be inviting key community and agency representatives to assist it in the review process, and it has commissioned the development of a handbook for communications staff and advertising agency personnel to assist them in portraying racial diversity in a responsible and non-stereotyped manner.

Another important initiative of the Cabinet Committee on Race Relations was the appointment of a Task Force on Publicly Assisted Housing and Race Relations, which was given the responsibility to review the race relations climate as it affects the residents of publicly assisted housing. The task force is consulting with relevant agencies and groups, and it will report its findings to the Cabinet Committee on Race Relations. The Division has a member on this important task force.

Government of Ontario Policy Statement on Race Relations

The Cabinet Committee on Race Relations developed a policy on race relations, which was adopted by the Government of Ontario. This is the first policy statement on race relations to be produced by a government in Canada, and it is being distributed to all ministries and Government boards, commissions and agencies in a reaffirmation of the urgent need to ensure that racism is not tolerated in the province.

Research and Publications

Research continues to serve the Division as an aid in decision-making and problem-solving. Research also makes it possible to develop a current understanding and evaluation of experiences in other jurisdictions within and outside Canada and to apply those experiences in selecting among various courses of action and policies.

A number of major research projects were completed, some of them published within the fiscal year and a few others still due for publication. In January, a study done for the Division by the York University Institute for Behavioural Studies entitled, "Visible Minority Business in Metropolitan Toronto: An Exploratory Analysis," was released in Toronto. The study represented part of the Division's attempt to gain a better knowledge of the race relations situation in a variety of institutional settings. More specifically, it examined the experiences of visible minority business entrepreneurs in the Canadian business environment. The experiences of these entrepreneurs were contrasted with those of similar mainstream business operators.

Similarly, the Division tried to develop an understanding of the career paths of visible minority M.B.A. graduates of Ontario universities. The study, which was conducted for the Division by Queen's University under the direction of Professor Elia Zureik, was released in June 1983. In both the York University and Queen's University studies, the influence of the racial dimension on business success was specifically examined.

In fiscal year 1982-83, a historical review was made of more than twenty years of the Commission's involvement in the area of race relations. This will be a useful bench-mark for program and policy re-direction in the 1980's within the now more specific legislative mandate of the Race Relations Division. This study is due for publication in the coming year.

Overall, research plays a critical role in the involvement of the Division with the Staff Working Group of the Cabinet Committee on Race Relations as well as in providing policy-related research support to the Commissioner for Race Relations and the decision-making process of the Division. Its role in identifying gaps in knowledge, in interpreting data, in developing new approaches in program and policy initiatives, and in evaluating available evidence in the context of program delivery, is one that has been made more urgent by the increase in the Division's responsibilities and workload.

TABLE 12 - Race Relations and Race Relations Commissioner

		1982-83	1981-82
Cases:	Mediations	132	183
	Projects	71	63
	Consultations	384	286
Public Education:	Projects	32	37
	Activities	246	1,848 *
	Consultations	130	-
Research Projects:		7	-

* Includes public education activities by Compliance staff, now shown in separate table.

TABLE 13 - Race Relations Cases According to Sector

Sector	Media-tions	1982-83		1981-82	
		Projects	Consulta-tions	Media-tions	Consulta-tions
Neighbourhood Relations	39	4	8	62	10
Public Services/Facilities	15	1	2	15	7
Criminal Justice System	27	13	13	50	15
Educational Institutions	11	8	52	21	49
The Workplace	7	4	17	8	10
Unions	1	1	10	-	4
Media	10	4	14	11	3
Health/Social Services	1	4	10	1	12
Community Organizations	5	15	179	8	107
Religious Institutions	3	2	11	-	11
Government	12	15	50	3	44
Community at Large	1	-	18	4	14
Total	132	71	384	183	286

ONTARIO HUMAN RIGHTS COMMISSION STAFF

1982-1983

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Silberman, Toni
Wood, Glenda

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Gaspar, Fern
Goulopoulos, Frances *
Herman, Thea
Hurley, Helen
Jim, Serena
Laporte, Robbi
McGregor, Sharon
Mears, Laurie
Reynolds, Jessica
Stratton, Jim
Svezda, Laima
Taylor, Sandy *

Race Relations Division

Allen, Margaret *
Bullen, Sharon
Charles, Joyce
Chiappa, Anna
D'Ignazio, Dan
DaSilva, Michael
Fraser, Kathleen
Gill, Surinder
Guttentag, Gail
Ifejika, Sam
Morrison, Glen
Nakamura, Mark
Ramondt, Susan
Schweitzer Rozenberg, Ruth
Siu, Bobby
Tan, Khim
Whist, Eric
Witter, Merv
Zaidi, Urooj

Handicap Discrimination Unit

Binstock, Robert
Gulamhussein, Zarina
Justason, Barbara
Lawrence, Greg
Ramanujam, Sita
Ruiter, Fred
Singh, Vidya

Eastern Region

Ackroyd, Lynda
Legault, Therese

Polley, Joe
Richard, Maurice

Northern Region

Galinis, Ruth
Jackson, William
Lapalme, Gilles
Mitchell, Irene
St. Onge, Jo-Anne
Welch, Dan

South Western Region

Barnes, Dorothy
Burns, Walter
Cargill-Sim, Fiona
Carrick, Anne
Dahlin, Anita
Edwards, Neil
Marino, Len
McSween, Selwyn
Seguin, Susan

Toronto Central Region

Chapman, Shirley
Crean, Fiona
* Goldrick, Penny
Goren, Monty
Holt, Silvilynn
Johnson, Beverley
Mullings, Paulette
Nebout, Maggie
Speranzini, Gary
Stern, Doris

Toronto East Region

Caffrey, Colm
Della Vella, Rick
Dewe, David
Grima, Peter
Kerna, Gloria
Mankika, Anne
Palacio, Roger
Robson, Beverley
Simon, Michael
Stansfield, Ron

Toronto West Region

Arnot, Perry
Bernhardt, Kim
* Burpee, Joyce
Chopra, Raj
Hogan, Frank
Kaczmarski, Joan
Marcuz, Vic
McKenzie, Wesley
Mutimer, Connie
* Passmore, Ellen
Wilson, Kim

* These staff members left the Commission during the fiscal year.

COMMISSION OFFICES

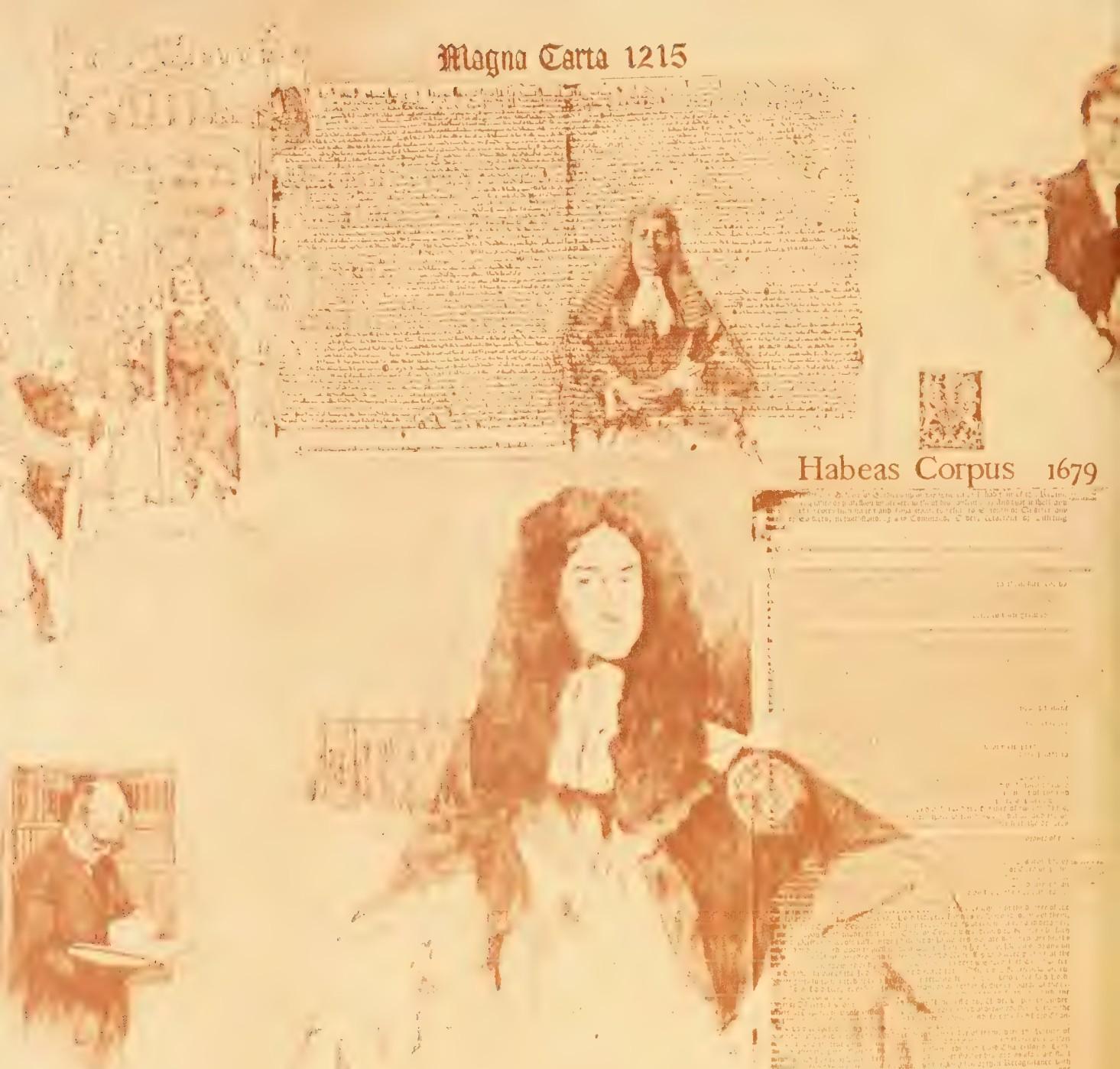
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Sault Ste. Marie	Windsor
390 Bay Street P6A 1X2 (705) 949-3331	500 Ouellette Avenue N9A 1B3 (519) 256-8278
St. Catharines	
205 King Street L2R 3J5 (416) 682-7261	

Magna Carta 1215



Habeas Corpus 1679

...and that it had been to the best of their knowledge, up to that time, the most
convenient and easiest way to do this. And that if there were
any difficulty in the matter, they would be ready to do what was necessary to obviate any
such difficulty, and that they were willing to do all that was necessary to obviate any
such difficulty.

Abolition of Slavery 1793



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-A56

HUMAN RIGHTS CODE

PREAMBLE

WHEREAS recognition of the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world and is in accord with the Universal Declaration of Human Rights as proclaimed by the United Nations;

AND WHEREAS it is public policy in Ontario to recognize the dignity and worth of every person and to provide for equal rights and opportunities without discrimination that is contrary to law, and having as its aim the creation of a climate of understanding and mutual respect for the dignity and worth of each person so that each person feels a part of the community and able to contribute fully to the development and well-being of the community and the Province;

AND WHEREAS these principles have been confirmed in Ontario by a number of enactments of the Legislature and it is desirable to revise and extend the protection of human rights in Ontario;

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Every person has a right to equal treatment with respect to services, goods and facilities, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, age, marital status, family status or handicap.

2.—(1) Every person has a right to equal treatment with respect to the occupancy of accommodation, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, age, marital status, family status, handicap or the receipt of public assistance.

(2) Every person who occupies accommodation has a right to freedom from harassment by the landlord or agent of the landlord or by an occupant of the same building because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, age, marital status, family status, handicap or the receipt of public assistance.

3. Every person having legal capacity has a right to contract on equal terms without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, age, marital status, family status or handicap.

4.—(1) Every person has a right to equal treatment with respect to employment without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, age, record of offences, marital status, family status or handicap.

(2) Every person who is an employee has a right to freedom from harassment in the workplace by the employer or agent of the employer or by another employee because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, age, record of offences, marital status, family status or handicap.

5. Every person has a right to equal treatment with respect to membership in any trade union, trade or occupational association or self-governing profession without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, age, marital status, family status or handicap.

6.—(1) Every person who occupies accommodation has a right to freedom from harassment because of sex by the landlord or agent of the landlord or by an occupant of the same building.

(2) Every person who is an employee has a right to freedom from harassment in the workplace because of sex by his or her employer or agent of the employer or by another employee.

(3) Every person has a right to be free from,

(a) a sexual solicitation or advance made by a person in a position to confer, grant or deny a benefit or advancement to the person where the person making the solicitation or advance knows or ought reasonably to know that it is unwelcome; or

(b) a reprisal or a threat of reprisal for the rejection of a sexual solicitation or advance where the reprisal is made or threatened by a person in a position to confer, grant or deny a benefit or advancement to the person.

7. Every person has a right to claim and enforce his or her rights under this Act, to institute and participate in proceedings under this Act and to refuse to infringe a right of another person under this Act without reprisal or threat of reprisal for so doing.

8. No person shall infringe or do, directly or indirectly, anything that infringes a right under this Part

PREMIER

MINISTER OF LABOUR

CHAIRMAN, ONTARIO HUMAN RIGHTS COMMISSION



ONTARIO HUMAN RIGHTS COMMISSION

ANNUAL REPORT

1983-1984

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June 1984

The Honourable Russell H. Ramsay
Minister of Labour
400 University Avenue
14th Floor
Toronto, Ontario
M7A 1T7

Dear Mr. Ramsay:

Pursuant to Section 30(l) of the Human Rights Code, 1981, it is my pleasure to provide to you the Annual Report of the Ontario Human Rights Commission for the fiscal year 1983/84 for submission to the Legislative Assembly of Ontario.

Yours sincerely,

A handwritten signature in cursive script that reads "Borden Purcell".

Canon Borden Purcell
Chairman

MINISTER'S MESSAGE



I am taking this opportunity to extend my sincere appreciation to the Commissioners and staff of the Ontario Human Rights Commission for the many accomplishments of the past year.

To me as Minister responsible for human rights, it is particularly gratifying to see the people of the Province of Ontario meeting the challenges of the new Code with such understanding and enthusiasm.

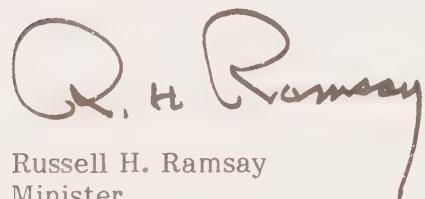
In 1983/84, I had the honour of representing the province at the Federal-Provincial-Territorial Conference of Ministers Responsible for Human Rights. I also had the honour of being a signatory to the commemorative Human Rights Scroll, which was unveiled on December 5, 1983 in recognition of the 35th Anniversary of the Universal Declaration of Human Rights.

A number of important initiatives under the new Code have been taken in the past year. Among them, I have been especially pleased to see the increasing number of people with handicaps who have been taking advantage of the new protections provided in the Code.

I am delighted to be the Minister responsible for the Ontario Human Rights Commission whose message has promoted pride in our Code, envy from other jurisdictions and an increased sensitivity to our wonderful diversity of cultures and peoples.

"Together We Are Ontario."

Yours sincerely,


Russell H. Ramsay
Minister

CHAIRMAN'S REMARKS

As I complete the second year of my tenure as Chairman of the Commission, I unavoidably enter into the third with a sense of considerable achievement, tempered by a realistic assessment of all that remains to be done. In particular, our extensive public education efforts of the past year have met with success and have resulted in increased awareness of individual human rights and responsibilities throughout the province.

Our highly competent and conscientious staff continues to demonstrate a high degree of expertise in applying the Code and in conducting the Commission's programs of public education, conciliation and compliance, race relations and research.

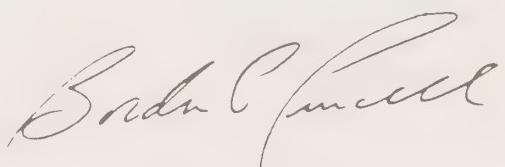
Discrimination on the ground of handicap has emerged as the fastest growing area of complaint since the proclamation of the new Code. This has, to some degree, been reflected in increased public awareness of this important ground.

At the recent Federal-Provincial-Territorial Conference of Ministers Responsible for Human Rights, an impressive series of initiatives was launched, including the creation of a Task Force on the Handicapped, in which our own Unit for the Handicapped will participate. Sincere appreciation is extended to our Minister of Labour, the Honourable Russell Ramsay, for the prominent and integral role he played in this area. My fellow commissioners and I have valued Mr. Ramsay's continuing commitment to the cause of human rights in the province of Ontario.

Other program initiatives and statistical patterns and trends of discrimination will be described further in this Annual Report.

It remains vital that all of us give a high priority to human rights. It is no accident that the preamble to our Human Rights Code reflects the language of the United Nations Declaration of Human Rights. In December of 1983, the Commission paid tribute to the 35th Anniversary of this Declaration by way of Human Rights Day/Week. We were particularly honoured by the unveiling of a commemorative Human Rights "Scroll" in the lobby of the main Legislative Building by the Honourable William G. Davis, Premier of Ontario and the Honourable Russell Ramsay. The Government's policy statement on race relations was also unveiled in the Legislative Building in 1983.

Throughout my career, I have always been dedicated to equality of opportunity and the fair treatment of each individual. I have experienced a similar dedication among all Commissioners and staff. We have a uniquely important role to play, but it is imperative that all individuals, organizations and institutions in our society take responsibility for improving human rights. We must all work together to build a society based on equality of opportunity, quality of life, dignity and respect.

A handwritten signature in black ink, appearing to read "Barbara Copefield".

THE COMMISSION



Chairman: Canon Borden C. Purcell

Canon Purcell, a member of the Commission since January 1978, was born in Athens, Ontario and left his position as rector of the largest Anglican parish in Ottawa in order to assume his duties as chairman of the Ontario Human Rights Commission in February 1982. The first clergyman to head such a commission in Ontario, Canon Purcell has planned and convened numerous ecumenical events that include conferences on racism, refugees and other disadvantaged persons. Involved in several international organizations on human rights, Canon Purcell is on the national council of the Canadian Human Rights Foundation, and is a member of the Consultative Committee on Human Rights for the Canadian Council of Churches.



Vice-Chairman: Rabbi W. Gunther Plaut

Rabbi Plaut is a veteran civil libertarian and social commentator. He has been a lawyer, clergyman and author. In December 1978, he was awarded the Order of Canada. In March 1983, he was elected president of the Central Conferences of American Rabbis, the international organization of liberal rabbis. He is the editor of the Commission's newsletter, "Affirmation", and has authored 15 books. Rabbi Plaut was recently reappointed to serve as Vice-Chairman until February, 1985.



Race Relations Commissioner: Dr. Bhausaheb Ubale

Dr. Ubale was born in India and educated in the United Kingdom. He holds a PhD in Economics. He authored a report entitled: "Equal Opportunity and Public Policy: A report on concerns of the South Asian Canadian community regarding their place in the Canadian mosaic." In July 1983, Dr. Ubale was elected to the board of directors of the International Association of Official Human Rights Agencies, and has also been granted an Honourable Fellowship in the Biographical Academy of the Commonwealth, founded in 1981.



Race Relations Commissioner: Peter Cicchi

Mr. Cicchi has a long and illustrious history of community and ethnocultural involvement. He has been a trustee of McMaster University Medical Centre, a past president, director and supreme officer of the Order Sons of Italy, a member of the Federal Consultative Council on Multiculturalism, a co-founder and director of Festitalia Corporation, a co-founder and president of the Little Theatre of the Sons of Italy, a co-founder and vice-president of the Hamilton Italian-Canadian Folklore Ensemble, the president of the Dante Alighieri Society of Hamilton, a director of the Italian Language and Culture Centre of Hamilton, a director of Opera Hamilton and a member of several community and cultural committees. The recipient of many citations, Mr. Cicchi was, as well, honoured by His Holiness Pope John Paul II with the title of Knight Commander of the Order of St. Gregory the Great. Mr. Cicchi, who has been a commissioner since September 1978, was appointed to the Race Relations Division in February 1983 and completed his term with the Commission in February 1984.



Race Relations Commissioner: Beverley Salmon

Bev Salmon practised her profession of public health nursing in northern Ontario, Toronto and Detroit. She has been actively involved in issues pertaining to multiculturalism, racism, education and the status of women, and was founding chairperson of the Black Liaison Committee of the Toronto Board of Education.

Currently she serves on a planning board committee in North York, is a member of the Arbitrators Institute of Canada, and the Toronto Urban Alliance on Race Relations.



Commissioner: Louis Alexopoulos

A graduate and scholarship recipient of the Universities of Wilfrid Laurier (B.B.A.), York (M.B.A.) and Western Ontario (LL.B.), Mr. Alexopoulos was appointed in February 1984 and brings to his new role as commissioner, expertise in legal and financial areas. He is director and treasurer of the Canadian Paparaon Association - St. Nicholaos, was a founding member of the Hellenic-Canadian Federation of Ontario, the Hellenic-Canadian Law Association and is a member of the Hellenic-Canadian Professional and Businessman's Association.



Commissioner: S. Aileen Anderson

Appointed to the Commission in February 1984, Ms. Anderson is a real estate agent and has served five consecutive terms as an elected trustee with the Etobicoke Board of Education. She was elected by the board to be its representative on the Metropolitan Toronto School Board. Ms. Anderson was also a member of the Advisory Committee to the Minister of Education on general legislative grants, the Metropolitan Toronto Committee on Race Relations and Policing, and has served on the Etobicoke Planning Council since 1968.



Commissioner: Mary Lou Dingle, Q.C.

Mary Lou Dingle is an active partner in a Hamilton law firm. She graduated from McMaster University in Hamilton and Osgoode Hall Law School in Toronto, and was called to the Ontario Bar with honours in 1964. An active participant in community life, she is a charter member of the Hamilton Elizabeth Fry Society, a former member of the Equal Rights Review and Coordinating Committee for McMaster University, of the Legal Aid Area Committee in Hamilton, and is presently involved in the United Way and the Canadian Club.



Commissioner: Sam Ion

A syndicated columnist and feature writer currently working for The Toronto Sun, Ms. Ion has been a board member with the YMCA-YWCA, Association for Early Childhood Education, Consumers Association of Canada, and the Status of Women's Committee in Hamilton. She was nominated for Hamilton's "Woman of the Year" in 1978, and for the "Vanier Awards" in 1982.



Commissioner: Dr. Albin T. Jousse

Dr. Jousse, a fellow of the Royal College of Physicians and Surgeons of Canada, has published more than 40 papers in his field of rehabilitation medicine. He was both a professor and department head of Rehabilitation Medicine at the University of Toronto, and medical director of Lyndhurst Lodge Hospital for 30 years. He is a member of many agencies and societies concerned with the physically impaired, including the International Medical Society of Paraplegia and the Canadian Neurological Society.



Commissioner: Marie T. Marchand

Born in Moncton, New Brunswick, Mrs. Marchand studied political science and public administration at the University of Ottawa. She was a candidate for the Nipissing riding in the 1979 and 1980 federal elections. Fluently bilingual, Mrs. Marchand has been extensively involved in many community organizations and is currently manager of the North Bay Downtown Improvement Area.



Commissioner: Dr. Harry Parrott

Dr. Parrott brought a wealth of experience in public life to his role as commissioner. He has been actively involved in provincial politics and community service groups. He served in the provincial Cabinet from 1975 to 1981, in the portfolios of Colleges and Universities and the Environment. Dr. Parrott is chairman of the Committee on University Education for Northeastern Ontario, and has recently resigned from the Commission to assume his duties as chairman of the Ontario Science Centre.



Commissioner: Gene Rheaume

Gene Rheaume was born in the Peace River area of Alberta and graduated from the Universities of Saskatchewan and British Columbia. He was a member of parliament for the Northwest Territories from 1963 to 1965. Mr. Rheaume is currently self-employed as a consultant on native affairs. He was formerly the national chairman of the Native Housing Task Force and is an honorary life member of five Métis, Indian and non-status Indian associations.

THE DEVELOPMENT OF HUMAN RIGHTS AND RACE RELATIONS IN ONTARIO

The History of Human Rights

As Ontario celebrates its Bicentennial this year, it is an appropriate time to reflect on the history of human rights and race relations in our province. It is a history filled with both bitter memories of discrimination as well as significant reminders of the constructive, if not inspirational, steps taken to forward our goal of equality of opportunity and the protection of human rights for the various groups and individuals that constitute our population.

Respect for human rights is an old tradition in Ontario, but it is a tradition fraught with fragility and vulnerability. The offensive practice of slavery existed in Canada less than 200 years ago. From the beginning of our history, the rights of Native peoples have taken a back seat to progress and development. Black people in Ontario have had to fight job discrimination, segregated schools and housing, and the denial of service in hotels and restaurants. Canadians of Japanese ancestry were subjected to humiliation and ostracism during the Second World War. Successive waves of immigrants in the 1940's and 1950's - those, at least, who were allowed to enter - recall the derogatory name-calling they had to endure and the struggle for human dignity and equal opportunity they had to face. Many visible minority newcomers to Ontario have suffered verbal and physical abuse in more recent times. Anti-Semitism has long been prevalent in Ontario. Ontario Jews have not forgotten the signs and practices that excluded them from beaches, hotels, restaurants, clubs and resorts as well as the anti-Semitic riot in Christie Pits, Toronto, on August 17, 1933. For years, many physically disabled people have been isolated from the rest of society. Persons who are handicapped are still denied access to many places and are refused equal opportunities to participate in the gainful aspects of daily life. Women continue to suffer from sex stereotyping with its attendant barriers to equality of opportunity, particularly in employment. Sex discrimination and sexual harassment are, sadly, all too common in our workplaces.

Fortunately, however, Ontario continues on an encouraging course of positive action in the field of human rights and race relations. Dating back to our first Legislative Assembly, which met at Newark (now Niagara-on-the-Lake) on September 17, 1792, our first Lieutenant-Governor, John Graves Simcoe, was an outspoken opponent of slavery. His government passed the British Empire's first anti-slavery law, the Anti-Slavery Act of 1793. This was "An Act to prevent the further introduction of slaves and to limit the term of enforced servitude within this Province." Accordingly, children of slaves, when they reached the age of 25, would automatically be set free. This Ontario law is considered to be the original foundation of today's Human Rights Code, since it preceded by 41 years the Imperial Emancipation Act, which abolished slavery throughout the British Empire, and preceded Abraham Lincoln's Emancipation Proclamation by a full 71 years.

In the 19th Century, Ontario provided a sanctuary for 40,000 runaway slaves. Many of our then leading public citizens were strong supporters of the abolitionist movement, and established organizations to help those escaping. Canadians such as George Brown, publisher of the Globe newspaper, spoke out against the inhumanity of slavery and offered encouragement and support to black slaves leaving the United States on the "underground railroad", to the freedom that Canada offered.

The Religious Freedom Act dates back to an Act passed by the Provincial Legislature in 1851. The 1851 statute dealt with church rectories and other religious matters. Among its provisions was the legal recognition of equality among all religious denominations in Ontario. This law guaranteed protection for the free exercise and enjoyment of religion and worship, without discrimination or preference. This established the foundation for the rights and freedoms enjoyed by the wide variety of religions practised in Ontario today.

The history of human rights in Ontario has been an ever-constant struggle for the dignity and rights of its citizens. The first human rights statute of the contemporary era was the Ontario Racial Discrimination Act of 1944, which prohibited publication, display or broadcast of anything indicating an intention to discriminate on the basis of race or creed. Its purpose was to combat the overt and repugnant signs that were at one time prevalent in shop windows, beaches and other places of public resort. Although such signs have largely disappeared, the legislative proscription remains.

By giving its assent to the Act, the Legislature embarked on an entirely new course in defence of the rights of all people. It established the principle that human rights are indivisible and that every person is free and equal in dignity and rights. It was, in effect, an assertive expression by the government that discrimination against any individual affects us all. It was an important pioneering statute because, for the first time, a legislature had explicitly declared that racial and religious discrimination were antithetical to public policy, and, from then on, the judiciary could no longer simply subordinate human rights to commerce, contract or property. Its influence was confirmed in 1945 when Mr. Justice MacKay of the Ontario High Court cited the Ontario statute in striking down a racially discriminatory property covenant purporting to prohibit sale of land to "...Jews or persons of objectionable nationality." Since then the Courts have generally demonstrated greater sensitivity to the pervasive and invidious consequences of racial discrimination and the corresponding importance of legislation attempting to secure human rights.

It is important to note also that the Ontario Racial Discrimination Act preceded the United Nations Universal Declaration of Human Rights by four years. In 1948, the U.N. unanimously proclaimed the Declaration of Human Rights, which recognizes the inherent dignity, equal and inalienable rights of all members of the human family.

Ontario was the first jurisdiction in Canada to give formal and public recognition to the moral, social and economic consequences of discrimination by establishing a human rights commission and enacting a comprehensive Human Rights Code in 1962. The Code consolidated all of the fair practices statutes passed in the 1950's. The Ontario Human Rights Commission was established in the preceding year, to seek the public's support for, and to create a public understanding and acceptance of, human rights legislation, fair treatment and harmonious intergroup relations. As its first major educational project, the Commission began publishing its official magazine, Human Relations, the forerunner of the Commission's present day quarterly, Affirmation.

The New Human Rights Code

Throughout the 1960's and early 70's, new human rights issues were emerging. Many of these were examined in the Commission's 1978 study of human rights in Ontario entitled Life Together. As a result, the new Human Rights Code was proclaimed as law on June 15, 1982, 20 years to the day since the enactment of the first Code. The

extended grounds and broadened mandate of protection placed Ontario once again in the forefront of human rights legislation.

Conciliation and Compliance

Fiscal year 1983/84 was the first full year of the implementation of a new and expanded Human Rights Code. On June 15, 1984, following a two-year grace period, the primacy provisions of the Code came into force. The Legislature decided, in enacting the new Code, that the public policy embodied in the statute should be reflected and respected in other Ontario laws. Accordingly, the provisions of the Code now apply and prevail in instances where other acts or regulations require or authorize conduct that contravenes the Code, unless the act or regulation specifically provides that it is to apply notwithstanding the Code.

The patterns of discrimination that have emerged over the year are detailed later in this report. Complaints alleging discrimination in employment continued to outnumber all other social areas during the year, and the Commission's application of the new provisions of the Code has been increasingly successful as a corrective in this area.

The blatant and deliberate discrimination against individuals, *per se*, in the past has now been greatly reduced. Such discrimination still exists, however, but it is now practiced with more subtlety and sophistication. And systemic discriminatory practices continue to be manifested in a complex interaction of seemingly neutral policies that affect the opportunities of minorities, women and persons with handicaps as they attempt to participate in the network of social and institutional structures that make up our society. Section 10 of the Code is directed to the consequences of those employment practices which, while not appearing to be exercised either intentionally or in bad faith, nevertheless restrict opportunities for a large number of our citizens.

Discrimination is frequently thought to result simply from individual acts of denial or exclusion. However, the Commission's investigation and conciliation of complaints alleging systemic discrimination is prompting employers to recognize that much discrimination is structured within and pervades their entire organizations. In dealing with such complaints, the task is to identify the structural features that operate to exclude certain groups from equal employment opportunities, to dismantle them and provide suitable, fair and reasonable remedies.

The trend towards recognizing the negative effects of constructive or systemic discrimination has been evident in recent years. Boards of inquiry have been quick to decide, for example, that average heights and weights of men and women were no substitute for testing whether the individual of either sex could actually do the job. The courts are requiring employers to look beyond any preconceived stereotypes of handicapped individuals as to what jobs they can and cannot perform.

The provisions of section 10 have been applied in complaints based on race, handicap and sex with respect to job requirements, pre-employment testing, and seniority systems. Ontario's employers are beginning to consider and implement non-discriminatory alternatives to those practices that perpetuate systemic disadvantage to protected groups, while, at the same time, advancing their legitimate business interests.

Moreover, affirmative action is now increasingly used as a remedy for systemic discrimination as employers come to acknowledge that properly designed and

administered special programs can create a climate of equality of opportunity that supports efforts to break down the structural and organizational barriers that sustain discriminatory employment practices.

Section 13 of the new Code has expanded and strengthened the former provisions for special programs. In addition, section 28(c) empowers the Commission to recommend that special programs be implemented. Special programs permit practical intervention at points where it is possible to remedy long-established patterns of discrimination that have created historical imbalances in employment opportunities for minorities, women and persons with a handicap.

In examining the caseload in the area of employment, it is evident that although privilege and disadvantage pervade all institutions, they are expressed most strategically in the labour market and the structure of occupations. An important objective of the Conciliation and Compliance program is to expand the opportunities of women, minorities and persons with handicaps in jobs requiring commensurate use of education, training and experience. The Commission is seeking an objective evaluation of the educational attainments and levels of skills of immigrants, obtained in their countries of origin. The Commission will be examining the criteria for membership or accreditation in professional and technical associations, and how these criteria are applied in assessing the qualifications of immigrants. An analysis will then be made to determine whether persons who trained overseas are victims of arbitrary and discriminatory barriers to accreditation in Ontario.

Race Relations

The Race Relations Division was established in 1979 as a response both to the community's heightened interest in race relations and the recognition by the Government of Ontario that race relations had become a critical issue that must be addressed by a special organizational scheme.

The long-term objectives of the Division are threefold: to realize to the fullest possible extent the goal of equal opportunity for all groups in society, to discourage through public policy and educational initiatives the promotion of bias and negative stereotypes against visible minority groups, and to establish harmonious race relations through long-term strategies involving all sectors of our society.

The decade of the 1970's was marked by an increase in race relations problems and conflicts. It saw the re-emergence of the more serious forms of overt racism, exemplified by verbal racial abuse and physical attacks, by rapidly deteriorating police-minority relations, and by the reappearance of racist groups determined to spread in the society the kind of extremist hate propaganda which the Commission was established to combat.

Prior to the late 1960's, most new Canadians emigrated from Europe and the United States. The effect of Canada's recent immigration policies has been to increase immigration from countries with large non-white populations. It is erroneously believed all too often that the greater presence of immigrants has caused racial and ethnic tension in the society. The increase in problems relating to prejudice and discrimination cannot be attributed merely to the characteristics of members of visible minority groups. What definitely multiplied within this period was the number of visible minorities who encountered hostility, prejudice and discrimination. This is more a reflection of the fact that these ills are inherent in our society and, in an earlier period, had led to the establishment of the Ontario Human Rights Commission.

During the fiscal year, the Cabinet Committee on Race Relations, which was established in 1979, developed a policy on race relations that was adopted by the Government of Ontario. The policy statement, which was unveiled in the Legislative Building in 1983, was the first to be produced by any government in Canada. It emphasizes the critical goal of equality of opportunity and the determination of Government to eradicate racism. Nearly 100,000 copies of this statement have been widely distributed throughout Ontario. The statement says, in part, "Acts of racial discrimination will be met with the effective enforcement of the Ontario Human Rights Code and with the development, whenever needed, of new legislative initiatives."

Although community, race and ethnic relations programs have been instituted by the Commission since its inception in 1962, these programs traditionally provided mediational services where inter-group tensions and disputes had developed. These services are still an important aspect of the program, but its resources are now devoted primarily to preventive measures aimed at averting racial, ethnic and religious tensions and conflicts. These programs are directed at both the community and institutional levels. These initiatives are discussed later, in detail, but three areas deserve special comment.

The impact of a high youth unemployment rate has a particularly adverse impact on those visible minority youths who are disadvantaged by lack of education and low levels of skills. Unemployment has negative cumulative effects on this group, and can cause young people to lose their self-esteem, confidence and motivation. The Division, together with other ministries and agencies of Government, has developed initiatives to increase the participation of visible minority youths in job creation, job training and apprenticeship programs.

In the past, critical changes have been made in school textbooks, school curricula and the school environment generally in the attempt to promote better race relations in the school system. This has been achieved through the cooperative initiatives of the Ministry of Education and the various boards of education, assisted by the Commission. The key element of change in education, as in other major institutions of society, has been to increase awareness among educators and school administrators, of the particular needs of a multi-racial and multi-ethnic student body.

The role of the criminal justice system, from enactment of law to its enforcement, is of great importance in race relations. In the mid-1970's, there was a dramatic increase in racially-motivated attacks against visible minorities, and particularly those of South Asian origin. In the same period, a significant number of visible minority individuals felt that they were not being treated fairly by the criminal justice system.

In 1977, an appeal taken at the initiative of the Attorney-General to the Ontario Court of Appeal established a new sentencing principle for racially-motivated assaults. The ruling stated, in part, "The sentence imposed must be one that expresses the public abhorrence for such conduct and the refusal to countenance it." This ruling binds all Ontario courts.

Many of the Division's programs are directed towards reducing or eliminating the barriers to equal opportunity within the different sectors and institutions of our society. However, discrimination and the social and economic disadvantage it creates are not only pervasive throughout social systems and institutions; they are cumulative and reinforcing in their negative impact on protected groups. The

Division's programs now attempt to deal with the interrelationships among the various types of discrimination in employment, education, training, housing and access to services. Unequal treatment in one area of life fosters inequalities in others, thus reinforcing negative stereotypes and minority status. Clearly, restrictions on employment opportunities can contribute to segregation in housing and in the community, and to poor achievement in educational and vocational activities.

Prejudice and discrimination are not precipitous outbursts; they do not occur in a vacuum. They are products of economic, political and historical situations, and are the culmination of a long and complex process of experience.

For these reasons, the Division works closely with Ontario agencies, interest groups, unions, community organizations, municipalities and local authorities responsible for such matters as police administration, education, housing, employment and social services. This represents a cooperative effort to enable minorities, persons with handicaps and women to move into those spheres in which they can achieve equality of opportunity through the elimination of job, housing, economic and social segregation and ghettoization. This, in turn, helps to break down the minority group isolationism that may develop as a response to discrimination.

Two examples of cooperative efforts will serve to illustrate this principle.

In 1983, the Division and the Ontario Women's Bureau (now the Ontario Women's Directorate) co-sponsored a conference that focused on the unique problems experienced by visible minority working women. Indeed, the Commission has enjoyed a very fruitful working relationship with the Ontario Women's Directorate, in a cooperative effort to address the many issues faced by women in their working and vocational lives.

Similarly, in the fall of 1984, the Commission is hosting a conference of senior members of the business community, with the assistance of Ontario's major business and industrial organizations. Senior managers direct and implement employment policies that affect hundreds of thousands of employees, and it is therefore essential for this sector and the Commission to work together in creating equal opportunities in the work force.

Despite the Commission's relatively short history, it has successfully met many of the challenges required under its mandate. The Commission continues to enjoy a fruitful working relationship with committed members of the community in promoting human rights and their protection in Ontario society.

COMMISSION ACTIVITIES

1983 / 84

The aim of the Ontario Human Rights Commission is to create a climate of understanding and mutual respect in which all of our people are made to feel equal in dignity and rights, and that each has a rich contribution to make to our province. The Commission promotes the public policy of Ontario to recognize the dignity and worth of every person and to ensure that equality of opportunity is guaranteed in all areas in which the right to freedom from discrimination is provided for under the Human Rights Code.

Public Education and Consultation

In an effort to accomplish this goal, the Commission places a strong emphasis on public education activities. From its daily experience, the Commission has become increasingly aware that there is an ongoing need to educate groups and individuals about the provisions of the Code and to reduce the prejudice and stereotyping that lead to discrimination.

During fiscal year 1983/84, the Chairman participated in events throughout Ontario concerning human rights and the Commission's programs of conciliation and compliance, race relations and public education. The Chairman gave more than 50 formal speeches, participated in over 25 major conferences and addressed or participated in more than 400 public education and community functions and consultations. In addition, he was interviewed many times by the print, broadcast and cable media.

The Commission continued its consultations with senior officials of major institutions, organizations and corporations, imparting information on the requirements of the Code and assisting in the development of human rights policies and preventive programs. Close contact was maintained with community, business and labour leaders, law enforcement agencies, educational, media, and religious institutions, social service agencies and all levels of government through speaking engagements, media interviews and liaison with community groups. As well, the Commission's staff continued its extensive educational programs of seminars, films, conferences, literature distribution and consultations.

During the monthly meetings of the Commission and the Race Relations Division, a number of individuals and organizational representatives are invited to exchange information which, in turn, enables the Commission to be kept abreast of particular human rights concerns. These discussions assist the Commission in its development of policies and programs. Through this format, mutual goals are recognized, as well as the need for co-operation in achieving them.

Close contact with school boards, organizations, community groups and individuals committed to the advancement of human rights principles enabled the Commission to hold, co-sponsor and participate in many seminars and conferences throughout the province during the fiscal year in an attempt to further increase awareness of and sensitivity towards human rights in our society. These events are discussed in further sections of this report.

Affirmation

Rabbi W. Gunther Plaut, Vice-Chairman of the Commission, is the editor of "Affirmation", the Commission's official newsletter. It contains feature stories, personal profiles, examples of significant cases and settlements, findings of boards of inquiry, editorials and articles on important human rights topics. Articles are written by staff, commissioners and interested members of the public. "Affirmation" has a circulation of 10,000, including employers, schools, labour, community organizations and members of the general public.

The June 1983 edition featured an article by the recently appointed Ombudsman of Ontario, Dr. Daniel Hill, on the history of human rights legislation and educational programs. Another article analysed the need for more racial diversity in advertising. The Chairman's corner featured his concern about anti-Semitic incidents in Ontario and the role that various religious institutions can play in this regard.

In September 1983, "Affirmation" provided a legal analysis of the new Code and an article on confronting racism in schools and classrooms. There was also an insert featuring the new Declaration of Management Policy Card. This Card reflects the provisions and the spirit of the Code, and is displayed by many companies, agencies and businesses across Ontario to demonstrate their commitment to human rights.

The December 1983 issue gave special recognition to the 35th Anniversary of the Universal Declaration of Human Rights. In March 1984, sex discrimination was highlighted, as was the work of the Commission's Unit for the Handicapped. Also included was an insert of the commemorative Human Rights "Scroll", whose purpose will be explained further in this section.

Northern Trip

In October 1983, the Chairman and Commissioner Marie Marchand, who resides in North Bay, travelled extensively throughout Northern Ontario. Canon Purcell visited Sault Ste. Marie, Thunder Bay, Dryden and Kenora while Mrs. Marchand travelled to Sudbury, Timmins, Moosonee and Moose Factory. Both addressed public meetings and met with concerned citizens' groups, community organizations and key civic leaders. The people and groups they met included local politicians, Native People's organizations, multicultural groups, Franco-Ontarian associations, provincial and municipal government officials, community colleges, chambers of commerce, personnel associations, unions, women's groups and law enforcement officials. In addition, both were interviewed and featured on various local media. The trips were extremely successful in providing the Commission with a first hand view of problems in the North and in making Northern Ontario residents more cognizant of the work and the concerns of the Commission.

International Responsibilities

Canada and its provinces and territories have been involved in the international human rights arena for many years. In signing the United Nations Declaration of Human Rights in 1948, all member nations assumed an obligation to promote human rights at home and abroad. Canada's interest was heightened during the Helsinki Conference of 1975 and the adoption of its Final Act, which was the reiteration by all participants of their international human rights commitments.

The Commission forms part of, and holds membership in, a network of human rights agencies on both the national and international levels. During the fiscal year, Commission representatives participated in conferences held by the International Association of Official Human Rights Agencies, the Canadian Association of Statutory Human Rights Agencies and the Federal-Provincial-Territorial Committee of Officials Responsible for Human Rights. A number of representatives from recently created human rights commissions abroad sought information and assistance by exploring and examining the role and function of the Ontario Commission.

A Federal-Provincial Ministerial Conference on Human Rights, held in 1975, created a new national organization called the Continuing Federal-Provincial Territorial Committee of Officials Responsible for Human Rights. This committee, which meets at least twice a year, was established to provide and maintain the necessary liaison and consultation for Canada to meet its obligations under the International Covenants. Ontario has been an active participant on the Continuing Committee since its inception.

The Continuing Committee has coordinated several conferences of ministers responsible for human rights, modelled after the initial one held in 1975, at which ministers from all jurisdictions in Canada review and discuss current issues and initiatives in the area of human rights. Ontario was represented at the September 1983 conference by the Honourable Russell Ramsay, Minister of Labour, the Honourable Roy McMurtry, Attorney-General and the Honourable Robert Welch, Minister Responsible for Women's Issues. This forum enabled the members to gain a common understanding of problems and concerns in the different regions of Canada and to keep abreast of Canada's role in addressing human rights issues in the international arena. In addition, the ministers proposed ways in which human rights programs in Canada can be strengthened to ensure that they conform with the principles enunciated in the International Covenants.

In August 1983, Canon Purcell represented Ontario when the United Nations reviewed Canada's Sixth Periodic Report of its undertaking in respect of the International Convention on the Elimination of All Forms of Racial Discrimination. The report outlined the various actions that have been taken by federal and provincial governments in Canada in order to implement the provisions of the Convention.

United Nations Declaration of Human Rights 35th Anniversary

December 10th, 1983 marked the 35th Anniversary of the United Nations Universal Declaration of Human Rights, whose principles form an integral part of the preamble to the Ontario Human Rights Code. The adoption of the Declaration was particularly charged with excitement because, for the first time, nations of the world spoke with one voice to proclaim the fundamental principles of human rights. The Declaration serves not only as an inspirational tribute to the human spirit, but also as a commitment to the furtherance of universal social harmony.

The Government of Ontario and the Ontario Human Rights Commission paid tribute to the occasion in many ways. In the Provincial Legislature on December 5, 1983, Premier William Davis made a statement commemorating Human Rights Day/Week. The Premier, the Minister of Labour and the Chairman unveiled a representative Human Rights "Scroll" in the Legislative Building. Fifteen thousand scrolls, which reproduce the Preamble and Part I of the Code, have been, and are continuing to be, distributed to schools, employers, unions, mayors and community organizations throughout the province.

The Commission sent letters to all municipal leaders across Ontario, asking their support and participation in declaring December 10th and the week of the 5th to the 11th as Human Rights Day/Week. The Commission also sent letters to a broad range of institutions, organizations, schools, religious institutions and unions, reminding them of the significance of this event, and enclosing ideas for celebratory activities. The gratifying response included articles and interviews on human rights issues in the media, requests for human rights seminars from business, industry and organizations, sermons in religious institutions based on international understanding, peace and universal social justice, and various other local activities.

Each of the Commission's 15 offices throughout Ontario was involved in at least one local project to celebrate the occasion. The overwhelmingly positive response indicated that most communities have a sincere concern and commitment for the support and development of human rights.

A National Coalition for Human Rights, based in Ottawa, was formed to plan the 35th Anniversary celebrations on a national scale. More than 40 national human rights organizations, representing more than five million Canadians, co-operated in developing a year of special activities, culminating in a national conference in Ottawa, December 8-11, 1983. Canon Purcell attended the conference on the Commission's behalf.

The Coalition included representation from women's groups, Native Peoples, racial, religious and ethnic groups, disabled people, civil liberties associations, legal organizations and students, as well as the Canadian Association of Statutory Human Rights Agencies, of which the Commission is a member. This Coalition reflected an example of the strong commitment on the part of organizations working in the area of human rights in Canada.

Clearly, individual human rights commissions and human rights legislation alone will never end discrimination. The Ontario Human Rights Commission has a uniquely important role to play, but it is imperative that all individuals, organizations and institutions in our society take responsibility for improving human rights.

LEGAL INITIATIVES

1983/84

Fiscal year 1983/84 was the first full year of the operation of the Human Rights Code, 1981, and we can now consider what issues have emerged.

While the case of Simpsons-Sears v. O'Malley, a case dealing with the issue of intentional discrimination under the previous Code, awaits its hearing before the Supreme Court of Canada, there is little doubt that the concept of constructive or systemic discrimination has expanded our understanding of the dynamics of discrimination and the long-lasting effects of past discrimination. What section 10 of the new Code does is incorporate within the ambit of discrimination, those practices, policies and requirements which, while they appear to be neutral, have an unequal or discriminatory effect on particular persons or groups.

Minimum height and weight requirements, for example, may be just as effective in excluding women from positions as outright refusals to hire them based on stereotypical views of their abilities. Are the specified minimum height and weight requirements truly related to job performance, or is there a less discriminatory and, in fact, a more objective way to determine job suitability? Similarly, requirements that all employees work on Saturdays preclude persons of certain religions from eligibility for employment. Word-of-mouth and "old school tie" recruitment practices may perpetuate the traditional racial, ethnic or sexual composition of the existing work force. And a job requirement that an applicant have "Canadian experience" where this is not a bona fide and reasonable qualification for the position denies recent immigrants a chance to compete equally for the job.

If the result of applying a general employment policy is to exclude members of a protected group, there is a *prima facie* case of discrimination. However, an employment regulation that is neutral on its face, but has the effect of excluding a certain group will be valid if the policy was made in good faith and is reasonably necessary to the employer's business operations. Once a *prima facie* case of discrimination has been established, the onus is on the employer to demonstrate that he or she is unable to change the policy or practice without undue hardship on the conduct of the business.

Probably the most difficult questions raised in the last year have been in the area of handicap, the major new ground in the Code. In most complaints filed, the respondent admits that the person was refused a job, dismissed or otherwise discriminated against because of the handicap. This is often due to the prejudiced assumption that the handicap in question must necessarily impede the individual's job performance and to a lack of knowledge about the abilities and potentials of persons with handicaps. The question to be resolved, then, is whether the person is capable of performing or fulfilling the essential duties or requirements of the job. If so, this renders the discrimination impermissible under the Code. To assess whether a person can fulfill the essential duties of a job, it is necessary to evaluate both the demands of the job and the corresponding abilities of the individual. To assess the ability of the person to fulfill the essential requirements may entail considerations of safety in that one of the essential requirements of performing a job is being able to perform it without placing co-workers or members of the public at risk.

A significant barrier to the employment of persons with physical handicaps is the use of pre-employment tests, such as medical examinations and strength tests. Such

tests may appear to be objective and to permit a quantifiable assessment of a job applicant. However, a particular test might not accurately assess the ability or aptitude of an individual to perform the job in question, and might disqualify persons who are capable of fulfilling the job requirements despite their handicaps. Thus, where a test is shown to exclude large numbers of an identifiable group, such as persons with handicaps or women, the Commission must establish whether the test is "valid", that is, whether it truly tests ability to perform the job. If it is not, alternative methods of assessing job-related abilities will be recommended to the employer.

Further explorations have been made this year in determining the extent of prohibited sex discrimination in what is referred to as the "sex plus" categories. Of great significance in the "sex plus" area were two board of inquiry decisions rendered during 1983/84 that expressed the view that discrimination because of pregnancy is a form of sex discrimination. This presents a further avenue that has heretofore been relatively unexplored.

A board of inquiry decision on racial discrimination examined in detail the dynamics of racial harassment. It has become apparent that racial name-calling in the workplace is a common-place phenomenon. While many people believe that much name-calling is done in jest, in reality it is most often derogatory and humiliating in its effect, and constitutes racial harassment for those who are the object of it, which is prohibited under the Code.

The truism of "Where there is a right, there is a remedy" is often stated, and while new rights are emerging, so, too, are new remedies. Such remedies are not necessarily limited to financially compensating the individual complainant. Rather, where there is evidence of a more widespread problem, they may be broader in their scope. For example, two boards of inquiry, having heard evidence of extensive racial name-calling in the workplace, ordered, in response, the establishment of management-worker race relations committees.

In cases of discrimination because of handicap in services or employment, the service provider or the employer may be asked to consider providing reasonable accommodation. In cases of sexual harassment, if there is evidence that the harassment is widespread, the Commission may propose that the company or institution establish a sexual harassment policy including an internal mechanism for dealing with complaints of harassment. Many settlements also include an agreement on the respondent's part that Commission staff will conduct a human rights seminar for personnel of the company.

Where past discriminatory practices have resulted in the exclusion of members of a particular group, or where systemic discrimination is found to be occurring, the Commission may recommend the establishment of a special program or may consider for approval an already-established program. Special programs are designed to relieve hardships or economic disadvantage, or to remedy the effects of past discrimination. Such programs do not contravene the other provisions of the Code.

These programs may include a review of employment practices and policies to ensure that they do not have a discriminatory effect; for example, changes in recruitment practices may be made to ensure applications from a greater cross-section of the community and special training programs for targeted groups in order that they may be eligible to compete and enter occupational spheres previously closed to them.

The provisions of the Human Rights Code apply not only to the private sector, but to the provincial government and its agencies as well. On June 15, 1984, as mentioned previously, all provincial statutes and regulations became subject to the Code unless the provision in the statute or regulation states that it applies notwithstanding the Code. During the two-year period since the Code came into effect the government has undertaken a review of its legislation, in order to identify potential conflicts with the Code, and to determine what should be done in light of these conflicts.

As these developments demonstrate, the work of the Commission continues to keep abreast of emerging issues by adopting strategies in response to them.

ROLE AND ACTIVITIES OF THE
RACE RELATIONS DIVISION

1983 / 84

In late 1979, the Race Relations Division of the Ontario Human Rights Commission was formally established to replace the Community, Race and Ethnic Relations Unit. The Division was given a statutory mandate in the new Human Rights Code.

The functions of the Race Relations Division, as related to race, ancestry, place of origin, colour, ethnic origin or creed, are set out in section 28(f), (g) and (h) of the Code as follows:

- to enquire into incidents of and conditions leading or tending to lead to tension or conflict based upon identification by a prohibited ground of discrimination and take appropriate action to eliminate the source of tension or conflict,
- to initiate investigations into problems based upon identification by a prohibited ground of discrimination that may arise in a community, and encourage and coordinate plans, programs and activities to reduce or prevent such problems, and
- to promote, assist and encourage public, municipal or private agencies, organizations, groups or persons to engage in programs to alleviate tensions and conflicts based upon identification by a prohibited ground of discrimination.

It is noteworthy that, for the first time, the Commission's role in assisting and encouraging other agencies, including municipal bodies, to engage in race relations work, is stated specifically in the Code. The proactive and reactive components of that mandate, with respect to responding to community tensions and conflicts, are expressly mentioned.

Central to the Division's mandate is the responsibility to promote the principle that human rights and harmonious race relations can be achieved only through the conscious efforts of all members of society. In fulfillment of this mandate, considerable resources and effort were devoted during fiscal year 1983/84 to developing and producing resource materials for educational programming, holding consultations, conferences and seminars with community groups and institutional leaders, monitoring the current state of race relations and responding to racial incidents.

New Initiatives, 1983/84

The several community consultations that the Race Relations Division held with the Filipinos in February of 1984, the Koreans in June of 1983, the Chinese in March 1983 and the Pakistani community on September 14th of the same year, reflect the

Division's determination to learn about the concerns and aspirations of community groups at first hand. The formal presentations received from community leaders on behalf of their groups addressed race relations issues and concerns in employment, the media, education, culture and social services delivery.

Having completed the first phase of these consultations, the submissions of community groups were then summarized and analysed for submission to the Chairman of the Cabinet Committee on Race Relations. Consultations with other minority groups will be carried out during fiscal year 1984/85. Overall, these consultations enable the Division to develop a closer working relationship with community groups and to increase its awareness of issues and concerns relating to employment, education, housing and social services.

Efforts have also been directed at developing resource materials for various community groups and institutional sectors to assist them in developing their own internal mechanisms for dealing with problems of racism and race relations. Many of the resources expended in developing these materials have been concentrated in the education, police, business and industry sectors, as will be discussed later in this report.

The Division continued to intervene directly where racial and ethnic tensions and conflicts arose, mediating between or among the parties in conflict. The Division uses current research findings to inform itself on the state of race relations in the province and to develop relevant policy initiatives to deal with the broad issues and concerns expressed in minority communities.

A new initiative was taken in 1983 to establish a consultative committee for the educational sector in order to maintain a close relationship with specialists and individuals with extensive involvement in this vital area. The Education Consultative Committee, made up of 15 members, including school principals, university teachers and school board members, has a broad mandate that includes helping the Division to identify race relations issues and concerns in educational institutions, and contributing to the solutions and strategies needed to deal with them.

ACTIVITIES, 1983/84

COMMUNITY, RACE AND ETHNIC RELATIONS

(a) Youth Employment

In its effort to improve the race relations climate by reducing racial, ethnic and religious tensions at the community level, the Division continued, during fiscal year 1983/84, to concentrate on the pressing issue of youth unemployment and its negative impact on visible minority youths in specific neighbourhoods in Metropolitan Toronto. Its special Summer Youth Employment Program, funded by the Ontario Youth Secretariat, was continued for the third year. This unique project provides for the placement in summer employment of over 100 young people drawn from these neighbourhoods with selected employers in both the private and public sectors. In its recruitment, the Division endeavours to ensure that the racial mix of the participants reflects the racial composition of the unemployed youth in the area. The Division is ably assisted by the advisory committees that it has established for this purpose. Comprised of representatives from the local agencies and institutions in the neighbourhoods from which the Division draws the participants, these

committees advise the Division on the project and assist in recruiting both the young participants and the employer sponsors. The young people, in addition to obtaining a first time job experience, also receive race relations, job and life skills training during the life of this eight-week program.

Again, for the second year, the Division also assisted in the implementation of an Ontario Youth Secretariat grant-program for the Metropolitan Toronto Police. This unique program, recommended by the Division in 1982, involves the placement of 35 young people from various racial and ethnic backgrounds in summer employment positions with the police department in an effort to improve police-youth and police-minority relations. Modelled upon the Division's own summer youth employment program, it also provides for job and life-skills training. The young people work with the Community Programs Section of the Metropolitan Toronto Police in meeting some of the important needs of senior citizens in the municipality.

In 1983, the Division, encouraged by the success of these summer youth employment programs, participated for the first time in a Winter Experience Program designed to assist young people who experienced great difficulty in obtaining employment during the winter months (November through March). The project provided the participants with work experience and training in race relations and life skills. Again, the Division approached employers willing to participate in the project and drew participants from selected geographic communities where youth unemployment is quite high among all racial groups. The Division intends to increase youth participation in these initiatives in Metropolitan Toronto in both the summer and winter months, and plans to expand the summer program to other parts of Ontario during fiscal year 1984/85.

(b) Hate Literature and its Control

The distribution of hate literature was of continuing concern to the Division in fiscal year 1983/84. As an example, the tenants of an apartment building in Metropolitan Toronto were recent victims of a hate literature campaign directed at South Asians. At their request, the Division brought the matter to the attention of the local tenants' association, the police and the local municipal mayor's committee on multiculturalism and race relations. Because of the possibility that the material could create racial tension in the high rise apartment complex, the tenants' association convened a public information meeting of residents of the building. The Division, the police and the municipal committee all assisted the tenants in working together to improve the racial climate in their neighbourhood.

The possibility of successful prosecution under the hate literature provisions of the Criminal Code is difficult given the narrow scope of these provisions. Accordingly, the Division recommended that these provisions be strengthened in its brief to the Parliamentary Task Force in the Participation of Visible Minorities in Canadian Society.

During the fiscal year, the Attorney-General commissioned Mr. Patrick Lawlor to conduct a study of existing legislation regarding hate literature and its control. The Division assisted in this study by providing examples of hate literature and background information regarding the nature and scope of the problem. Mr. Lawlor's thoughtful report on the various options available to redress this concern was released in March of 1984, and it is now under review by the Attorney-General.

(c) Municipal Involvement

Metropolitan Toronto

At the municipal and neighbourhood levels, the Division continued to assist the various municipal race relations committees to improve the race relations climate. The City of North York Mayor's Committee provided funding for a special project designed to address several issues that had contributed to an increase in racial tensions in a particular neighbourhood. Through the hiring of a neighbourhood relations worker and the establishment of a local committee comprised of residents, agency and institutional representatives, the racially diverse community was brought together to develop initiatives to alleviate these tensions.

In the City of North York, the Division co-sponsored, with the Brahms Youth Association, a conference which focused on education, recreation, the family and employment. This forum, which was also attended by representatives of local community groups and agencies, provided the members of the association with the opportunity to discuss the problems that affect them as members of a multiracial community.

Many other municipal committees are developing similar programs with the assistance of the Division. For example, the Division took part in a project designed to redress problems in the Jane-Finch community in North York, and was represented on an advisory committee established by the Municipality of Metropolitan Toronto to design a pilot project to assist a variety of community groups and associations to respond to concerns in the Jane-Finch area. The project employed the services of five outreach workers, who worked with the community to develop neighbourhood councils so that problems could be dealt with at the community level.

In the City of Scarborough, the Division has been assisting two local organizations to address racial and ethnic tensions: the Multicultural and Race Relations Committee of the Scarborough Human Services Board and the Ad Hoc Mayor's Advisory Group on Race Relations. In addition, the Division is co-sponsoring a conference on race relations with the Multicultural and Race Relations Committee of the Scarborough Human Services Board. Scheduled for June 1984, the conference is designed to heighten the awareness of the community and its institutions to the critical need for program initiatives on race relations.

Southwestern Ontario

In a continuing effort to sensitize community-based workers to the race relations issues that relate to their day-to-day work, the Division's southwestern region staff consulted with many workers in publicly assisted housing authorities during the fiscal year. Discussed were race relations issues as they affect tenants, property managers and the wider community.

As part of the Commission's outreach to Ontario's Native communities, the Division sponsored a conference in the southwestern region for Reserve Band administrators. Several workshops were designed to increase their awareness of the provisions of the Code and the responsibilities of the Division. Native community leaders play an important role by referring complaints and community problems to the Commission's district offices for resolution.

The Division also worked with community groups in Chatham in a cooperative effort to improve the race relations climate in their city. As a result of a conference sponsored by these groups, an ad hoc race relations committee was formed. The community groups will convene a similar but larger conference in 1984.

When residents of a Brantford condominium complained of racial harassment, the Division and the residents convened a meeting of the police and local politicians in order to discuss strategies for reducing the tensions that had developed and to improve the race relations climate over the long term. As a result of the meeting, the police and the residents are working in close cooperation with the Division to prevent further incidents of harassment.

In addition, the Division continued to work with and assist several human rights and race relations organizations in such cities as Hamilton, Windsor, Ottawa, Sudbury, Sarnia, Peterborough, Kitchener and London.

Northern Ontario

Similar initiatives are undertaken in the northern region, where Division staff consult and work closely with Native organizations and friendship centres in a cooperative effort to ensure equality of opportunity for Native peoples.

In northern Ontario, two local human rights committees have been established with the assistance of Division staff. Both committees were established with broad representation from community groups, government, private institutions and labour. They foster inter-community harmony and identify areas of potential tension or conflict in order to improve the ethnic and racial climate.

(d) Special Needs - The Visible Minority Woman

In response to the special needs of visible minority women, the Race Relations Division organized, in cooperation with the Ontario Women's Directorate, the first Canadian conference convened on discrimination as it affects visible minority women. The theme of the conference was "Racism, Sexism and Work." Some 500 delegates from across the province analysed the impact of racism and sexism on the employment of visible minority women, and a working relationship between policy makers and visible minority women was established.

To maximize the participation and input of all the women, extended outreach and consultations took place during the planning stages of the conference, and the co-sponsors were greatly assisted in their work by an ad hoc advisory committee comprised of visible minority women.

Through establishing a networking process, women were able to share their concerns and proposals for solutions. As an outcome of the conference, a province-wide, community-based coalition of visible minority women was formed to continue to work upon the goals and objectives established during the conference sessions.

Proceedings of this conference, with resolutions and recommendations, will be released in the coming year and should provide the Commission and the Ontario Women's Directorate with a basis for important policy and program decisions on the issues facing visible minority women in Ontario.

(e) Business and Industry

During the past fiscal year the Race Relations Division, with the assistance of the Conciliation and Compliance Division of the Commission, developed a training manual to assist employers in eliminating discriminatory practices and removing other arbitrary barriers that tend to undermine the principle of equality of opportunity in the workplace. The handbook, which is comprised of case studies and related exercises, is designed to introduce supervisors and managers to concrete examples of the dynamics of racism and discrimination. It suggests methods to ensure equal employment opportunity, as well as to provide concrete suggestions on how to resolve and prevent racial incidents that may arise. The handbook will be released to employers in the summer of 1984.

The Division acted in a consultative capacity when the East York Task Force on Employment sought its assistance in examining issues concerning equal employment opportunities for women and racial and ethnic minorities. The Division assisted the task force in the design and implementation of an employment utilization survey, and it continues to work with the task force as it examines employment policies and procedures used by the Borough.

(f) Unions

As one example of the Commission's educational activities with organized workers, Division staff conducted a seminar on human rights and race relations with Local 75 of the Hotel Employees and Restaurant Employees Union. The Division produced related resource material, which will be used by other union locals in their educational activities.

In conjunction with the Cross-Cultural Communications Centre, the Division developed materials in human rights training and a one-day seminar for union members on race relations in the workplace.

At the request of the Ontario Federation of Labour, the Division is assisting in the development of a policy statement and strategies for dealing with race relations issues that are suitable for adoption by the OFL's member unions.

WORKING WITH INSTITUTIONS

(a) Educational Institutions

The Division continued its public educational programs in educational institutions across the province by conducting seminars on the impact of discrimination on immigrant and visible minority students. It is currently developing new resource materials for educators to assist them in gaining sensitivity and skills for handling racial incidents and promoting racial harmony in the educational system.

In London, for example, the Division and the local school board conducted a one-day race relations sensitivity conference for teachers. The conference, entitled "Education in a Multi-Racial/Ethnic Society", was designed to increase the awareness of teachers to the critical issues in race relations in order that they may develop the ability to respond to such issues within the educational system.

The Division and the Hamilton Board of Education co-sponsored a curriculum development unit for Grades 9 and 10 English and Grades 11 and 12 Man in Society courses, on the subject of prejudice, discrimination and human rights. Issues for study include race relations, women's issues and discrimination against persons with handicaps.

The Division assisted in the planning of a conference of Windsor students who met to develop leadership capabilities among themselves as well as to improve inter-racial understanding in the schools and their neighbourhoods. The conference, entitled "Race Relations and Multiculturalism in Education", was co-sponsored by the Division, the Windsor Public School Board and the Windsor Urban Alliance. The discussions helped conference participants to stimulate awareness on issues affecting visible minorities in the schools. The Division is promoting this pilot project as a model for other school boards to adopt throughout the province.

In Ottawa, the Division, assisted by the Ministry of Education, the Faculty of Education and the Human Rights Research and Education Centre of the University of Ottawa, sponsored a conference on race relations and education. This conference was attended by several school boards in the Ottawa region as well as by community groups and citizens from Pembroke, Cornwall, Peterborough and Kingston. As a result of the interest sparked by the conference, plans are underway to convene a similar conference in Peterborough during fiscal year 1984/85.

Finally, the Division continues to encourage and assist various school boards throughout the province to design race relations policies and procedures with a view to their developing institutional leadership in combatting racial discrimination. The Division has been working with the Ottawa, Windsor, Etobicoke and Metropolitan Separate School Boards, and it continues to assist such boards as Toronto and the City of North York in developing strategies to remedy discrimination in schools.

(b) The Criminal Justice System

Correctional Institutions

The Division continued working cooperatively with the Ministry of Correctional Services to develop a human rights and race relations policy in its system. It is also participating in planning a race relations training program, which will be conducted for all staff in Ontario correctional institutions.

Law Enforcement Agencies

When police-minority tensions developed in a multi-racial community in Metropolitan Toronto, the Division played a facilitative role in forging links with a local community organization and the Office of the Public Complaints Commissioner. Assistance was offered with respect to incidents of alleged police harassment. The Division will be working with the Public Complaints Commissioner, the community organization and the police to improve the police-minority relations climate.

The Division is undertaking similar efforts in southwestern Ontario where problems have developed between the Native community and a regional police force. Staff of the Division held discussions with the police, Native leaders and the Ontario Police Commission on ways to implement long-term strategies designed to ensure positive police-Native relations in the area.

In the northern region, Division staff conducted in-service training with members of the police force and the security force of a large corporation in Sault Ste. Marie. The Division also participated in an Ontario Provincial Police training program on Native-police relations, designed to assist non-Native officers who police areas of the province with high Native populations. When police-minority tensions developed between the Métis people and the police in Thunder Bay, the Division's staff was instrumental in bringing the issues to the attention of the police, who remedied the problem.

The Division also developed and conducted a race relations training program for the University of Toronto campus police, at the university's request.

(c) The Cabinet Committee on Race Relations

The Division continued to serve on the Staff Working Group established by the Cabinet Committee on Race Relations. The Race Relations Commissioner and staff assist the Cabinet Committee with respect to race relations issues as they relate to the responsibilities and programs of the Government of Ontario. In 1983, the Division participated on various task forces and work groups established by the Cabinet Committee in such areas as advertising and communications, publicly assisted housing, education and equal employment opportunity.

(d) Federal-Provincial Activity

The Division also participated on two federal-provincial work groups on issues affecting race relations in the area of education and Canada's obligations under the United Nations Convention on the Elimination of all forms of Racial Discrimination.

RESEARCH

The Division, through research, continues to accumulate information and experience from other jurisdictions in Canada and abroad as an essential tool in formulating its own policy initiatives in the area of race relations. This is partly in recognition of the international nature of race relations issues in today's world, which has resulted in the greater sharing of information between different jurisdictions both within and outside Canada.

The Division's in-house research facilities are service-oriented and have been used to support race relations initiatives within institutions and in the community as well as the work of specialized bodies and committees such as the Abella Commission of Inquiry on Equality in Employment. The Division prepared a number of position papers during the fiscal year, including a brief presented to the special House of Commons Committee on the Participation of Visible Minorities in Canadian Society.

DISCRIMINATION BECAUSE OF HANDICAP

Fiscal year 1983/84 marks the first full year of implementation of the provisions of the new Code relating to handicap. Statistics on complaints received over the year indicate that the volume of complaints alleging discrimination because of handicap exceeds the number of complaints on any other single ground.

The Code provides the right to freedom from discrimination on the ground of handicap in the areas of services, goods and facilities, accommodation, contracts, employment and membership in vocational associations. Harassment because of handicap is also prohibited in employment and accommodation.

Handicap is defined as any degree of physical disability, mental retardation or impairment, learning disability or a mental disorder. Lack of appropriate means of access does not, by itself, amount to discrimination contrary to the Code. Also, it is not a contravention of the Code to deny a person a job, service or accommodation if the only reason is that the individual is incapable of performing the essential duties or requirements of a job, or is incapable of fulfilling the essential requirements of a service or accommodation.

Questions about illness, injury or medical history, in the past or in the present, may not be asked on an application form or at any stage prior to the interview. Employers may raise questions regarding the extent of an applicant's handicap as it affects his or her ability to do the job, only during a personal interview.

Similarly, an employer may require an applicant to undergo a job-related medical examination either during or after the interview process, but not before, and such medicals should be job-related and apply to all applicants. In addition, the results of the medical examinations should be used only to determine the person's ability to perform the essential duties of the employment.

These provisions address common concerns that persons with disabilities have been denied employment opportunities because of traditional prejudices against them, together with lack of knowledge of their capabilities and potential. In particular, it has been the Commission's experience that qualified applicants with handicaps are being excluded from jobs without a determination being made as to whether the individual is able to perform the essential job functions.

The emphasis of Ontario human rights legislation has been on voluntary compliance with a conciliatory approach. Cases of discrimination because of handicap throughout the province are handled by the regional staff, who receive specialist guidance through an administrative arrangement established because of the unique and complex features of complaints based on handicap. Professional expertise is often necessary to assist the Commission in making decisions as to what constitute the essential duties of a job on one hand, and the individual's ability to perform them, on the other. Other complex cases requiring expertise include those involving novel tests of jurisdiction and complaints in which the validity of employment tests and other screening procedures are at issue.

ACTIVITIES 1983/84

Conciliation and Compliance

The Commission staff assist employers in their understanding of the provisions of the Code by reviewing their pre-employment screening measures, such as advertising, application form review and pre-employment medicals. In addition, employers are assisted in developing appropriate measures to determine the essential duties and requirements of specific jobs as these relate to the individual's ability to perform them. Educating employers about recruitment strategies that will inform handicapped individuals and their representative organizations of employment opportunities is another important responsibility.

Complaints of Discrimination

During the period of April 1, 1983 to March 31, 1984, the Commission handled 290 formal complaints. Of these 125 were resolved, 16 were dismissed by the Commission either due to lack of jurisdiction or lack of evidence to substantiate the complaint, and 36 were withdrawn by complainants. The remaining 113 were still active at March 31, 1984.

Of the formal complaints filed, 278 have been on the ground of physical handicap and 36 have been on the ground of mental handicap. The types of handicaps are shown in Table 3.

Some major issues dealt with during the fiscal year include the examination of physical standards established for firefighters and police officers, such as visual acuity, colour blindness, obesity, diabetes and allergies. The employer's selection criteria may allow for valid, job-related screening procedures. However, those procedures that are not based on ability to perform the essential duties of the job and that adversely affect the employment opportunities of persons with handicaps are not permissible under the Code.

Also, complaints registered against insurance companies where complainants alleged that they were refused insurance coverage because their handicaps were believed to place them at risk, have met with considerable success. Resolution of these complaints has resulted in mentally and physically disabled applicants being assessed on their individual merit, rather than reliance on group characteristics. An individual with a handicap has an equal right to contract for insurance unless the insurance contract differentiates on reasonable and bona fide grounds because of the handicap in question.

For example, a complainant with controlled diabetes alleged that he was denied car insurance because he was considered to be too high a risk. As a result of the Commission's intervention, the respondent agreed to delete the blanket exclusion of mentally and physically handicapped persons in its rating manual, to insure these persons at standard rates, to reconsider the complainant's application for insurance, and to issue a policy statement to this effect to all of their employees.

In another case, the complainant was denied car insurance because he has cerebral palsy. The evidence indicated that no effort had been made by the respondent to assess the complainant on his individual merits and driving record. According to the respondent, cerebral palsy represented a physical disability that impairs the operation of a vehicle for all of its victims. For this reason, the respondent believed

that it was allowed to refuse automobile insurance to all handicapped persons. However, the investigation revealed that the complainant had successfully passed a driver's course, had a record of five years of accident-free driving, and had received insurance in the past from other companies at no additional charge.

When apprised of these facts, the respondent sent a letter of apology to the complainant and offered to accept his application for car insurance at the standard premiums. The respondent also agreed to change its policy concerning the assessment of applicants, namely, that a disability is to be underwritten on an individualized assessment of risk basis, rather than on group characteristics.

Public Education

December 1983 was the 35th Anniversary of the United Nations Declaration of Human Rights. The Commission participated in this worldwide celebration by enlisting the support of school boards, municipal governments, advocacy groups, individuals, organizations and the media to inform the citizens of Ontario of the gains made in human rights generally and discrimination because of handicap in particular. Commissioners and members of staff were featured on local television stations, spoke to chambers of commerce, employers' associations and government agencies to increase the awareness of the people of Ontario to the principles and provisions of the Code and to promote equality of opportunity for the handicapped in all sectors of our society. In addition to using mainstream and community broadcast and print media, articles about the Commission's programs relating to discrimination because of handicap are included in the newsletters, papers and reports that are issued by interested organizations to their memberships.

The Commission continues to provide an educational and consultative service on a province-wide basis for business, industry, unions, vocational associations, educational systems, inter and intra-governmental agencies, voluntary and religious associations.

Further, members of staff conduct seminars on the Code's provisions relating to handicap for supervisors and managers within the ministries of Labour and Community and Social Services and the Workers' Compensation Board, in order to increase their awareness of the provisions of the Code relating to handicap.

In-house seminars are conducted with associations for the handicapped and social service agencies to promote and facilitate information exchange, contact development and networking. The Ontario Association for the Mentally Retarded, the Ministry of Labour's Handicapped Employment Program, the CNIB, Persons United for Self-Help (PUSH), and BOOST, to name a few, have been consulted and participate actively in assisting the Commission to deal with formal complaints. Lawyers from the Advocacy Resource Centre for the Handicapped (ARCH) have frequently represented complainants during fact finding conferences and conciliation. The Canadian Hearing Society has also assisted during fact finding in providing interpreters for complainants who are hearing impaired, as well as testing complainants' hearing ability in light of the essential duties and safety factors of particular jobs. Epilepsy Ontario and its member branches have provided the Commission with information on epilepsy and the factors that may or may not pose a risk to the worker, co-workers or members of the public.

Discussions with consultants on architectural or environmental barriers are ongoing. Consultations with occupational therapists about accommodation, aids and

adaptations explore areas such as functional capacity assessments and medical reviews to determine the job performance ability and potential of individual complainants. Contacts have been established and maintained with agencies such as the March of Dimes, the Workers' Compensation Board, Vocational Rehabilitation Services and the Ministry of Community and Social Services.

Staff Training and Development

Training sessions for the Commission's staff on the legislation pertaining to handicap are conducted on a regular basis at regional staff meetings and workshops. In-house seminars and consultations for staff are also conducted for organizations and agencies dealing with issues relating to handicap. Consultations are held with community agencies whose clienteles may seek the assistance of the Commission, such as the March of Dimes, the Advocacy Resource Centre for the Handicapped, the Ontario Association for the Mentally Retarded, the Blind Organization of Ontario for Self-Help Tactics and the Canadian Hearing Society.

Consultations are routinely held with physicians, occupational- and physio-therapists and vocational rehabilitation counsellors, in order that the staff may become knowledgeable about techniques for assessing the relationship between various handicaps and job performance. In addition, family physicians are providing the Commission with detailed, job-site assessments about their patients' ability to perform specific duties or to work in various environments such as heat, dust and fumes.

The Commission continues to develop and acquire an extensive collection of resource information pertinent to discrimination against disabled persons. These materials deal with such subjects as existing legislation that protects the rights of the handicapped, and related legal interpretations and case law. The Commission's resource centre contains materials obtained from other human rights commissions and agencies or organizations involved with various types of handicap, and staff are regularly kept abreast of new developments in North America and overseas.

Program Development and Research

Upon the filing of a complaint, section 16 of the Code provides that the Commission may use its best endeavours to bring about a settlement as to the provision of access or amenities, or as to the duties or requirements, even though lack of access or adaptation does not by itself constitute a violation of the statute. If a finding of discrimination has been made by a board of inquiry, however, the board may make a finding as to whether the equipment or essential duties could be adapted to meet the needs of the person whose rights have been infringed, and if so, may order the adaptation of equipment and duties unless the costs involved would result in undue hardship to the respondent. Consultations with employers, landlords and business persons regarding possible adaptations are undertaken regularly.

The Unit for the Handicapped conducted two studies during the fiscal year:

Reasonable Accommodation of the Handicapped provides an analysis of how the concept of reasonable accommodation is defined and applied in several jurisdictions. Saskatchewan, Alberta, Quebec, Ontario, Canadian and United States federal laws concerning reasonable accommodation were examined in order to determine: whether there is a duty to accommodate the physically disabled, the

extent of the duty, how the courts and boards of inquiry have interpreted that duty, the relevance and usefulness to the Ontario Commission of any guidelines that have been established in this area, how "undue hardship" to the respondent is interpreted and applied and, finally, the relevance and practical implications of any existing accessibility standards.

Discrimination on the Basis of Disability in Insurances and Benefit Plans examines the processes used by the insurance industry to identify persons who represent increased risks because of a handicap. A basic premise of human rights legislation is that each individual has a right to be evaluated, and subsequently treated, on the basis of his or her own merits. However, the insurance industry has traditionally identified group characteristics upon which the insurability of individuals is based.

Section 21 of the Code provides that there is no contravention of the legislation where a contract of insurance differentiates on reasonable and bona fide grounds because of handicap. Under section 24, the Code permits genuine and reasonable distinctions or exclusions because of handicap in certain employee benefit plans. This study examines whether or not discrimination is occurring against handicapped persons in insurance, and the provisions of sections 21 and 24 are systematically reviewed and evaluated in comparison with similar provisions in other jurisdictions.

These studies are currently being reviewed by the Commission with a view to developing policy and program initiatives on the basis of the findings. In addition, the reports will be used in the Commission's consultative and educational programs.

International Responsibilities

1983/1992 has been proclaimed as the Decade of Disabled Persons by the United Nations. At the September 1983 Federal-Provincial-Territorial Ministerial Conference on Human Rights, ministers expressed their support for the United Nations Decade of Disabled Persons, and instructed the Federal-Provincial-Territorial Continuing Committee of Officials Responsible for Human Rights to engage in a consultation process for the development of a plan of action. A working committee has been established for this purpose, including representation of the Ontario Human Rights Commission. The committee presented an interim report to the ministers in May, 1984.

EXAMPLES OF
COMPLAINTS OF DISCRIMINATION

1983 / 84

EMPLOYMENT

Race, Colour, Nationality, Ancestry, Place of Origin, Ethnic Origin

Seven black males, employed as cleaners for a major public amusement facility, alleged that they and other black employees had been victims of both intentional and systemic discrimination by both their employer and union. A black community organization also filed complaints on their behalf. The complaints alleged discrimination in employment because of race and colour.

The allegations included the following:

- Of 600 employees, only nine were black and all but two of them were employed as cleaners. No whites had ever been employed in this position;
- because the collective agreement provided that seniority was non-transferable among jobs in the organization, advancement, promotion and transfer were effectively prevented for black employees, who were concentrated in the lowest positions in the company;
- when staff reductions were made for budgetary reasons, half of the cleaners were laid off. Persons in other job categories, however, had their hours reduced according to availability of work.

Investigation revealed that hiring tended to be by word of mouth within each job classification, thus perpetuating a pattern of job ghettoization that began with the opening of the facility in 1960 when overt discrimination was especially prevalent. It was learned that one of the complainants was denied a position in Security, and that a white friend of another complainant was denied employment as a cleaner.

An investigation of company records established that new white employees had been hired in the cafeteria after the complainants had been bumped and laid off, and that the employer had made no attempt to consider any of the complainants for the vacancies. However, these actions had been carried out by a concessionaire doing business in the United States that was no longer under contract to the respondent. The investigation substantiated most of the allegations. However, the investigation did not support the allegation that the lay-off of cleaners was racially motivated.

A conciliation meeting was held between the complainants, the employer, the union and a representative of the community organization. The parties agreed to the following terms of settlement:

- An affirmative action program was designed, with a referral service conducted by the community

organization. The organization is being advised of all vacancies, and refers qualified applicants to the company;

- the employer instituted a central hiring system, with systematic job-related criteria for selection and placement. The manager of the new system seeks referrals from the community organization before taking other recruitment measures. The Commission will monitor the program for three years, and will make periodic assessments of progress made. At the respondent's request, the Commission issued an order under section 13(1)(e) of the Code respecting the special program;
- the employer has undertaken, in consultation with representatives from the Commission, the community organization and the Ontario Federation of Labour, to reduce or eliminate any clauses in the collective agreement that have the effect of maintaining black employees in jobs with low classifications;
- one complainant was placed in the position of waitress from which she had been bumped;
- job offers were made to the other three complainants who had been laid off.

A black woman of Trinidadian origin had been employed as a housekeeping aide by a hotel for two years. She alleged that after she was laid off due to a shortage of work, she maintained contact with the personnel department in the hope of being recalled in the Housekeeping Department. She told the employer that she was willing to work in other areas of the hotel. She claimed that she was later rehired as a clerical worker but was dismissed after one week on the job. Shortly thereafter, a white woman was hired in the complainant's former position of housekeeping aide. The complainant alleged discrimination in employment because of race, colour and ethnic origin.

The investigation revealed that the complainant's work performance in the clerical position had been good, and that she had received excellent performance appraisals in the Housekeeping Department. An examination of personnel records showed that only one other black person was employed in a clerical or secretarial position. Many other non-white employees indicated that they were treated unfavourably because of their race. The weight of the evidence supported the allegations of discrimination.

In conciliation, the respondent agreed to reinstate the complainant in her former position as housekeeping aide, with her original seniority date. The employer also agreed to consider her for other jobs for which she qualified in the hotel. Management made a commitment to attend a race relations seminar conducted by the Commission's staff, and to issue a declaration of the employer's policy of non-discrimination to all employees.

After being highly recommended by a supervisor in the Supplies Department of a hospital, the complainant, a black male originally from Nigeria, was interviewed and hired by the manager. The complainant alleged that at the end of his first three weeks on the job, the manager dismissed him because he had been late for work twice and had delivered supplies out of sequence on one occasion. The complainant also alleged that the supervisor who had recommended him was told by the manager that if she had known the complainant was black, she would not have interviewed or hired him. The complainant alleged discrimination in employment because of race, colour and ethnic origin.

The investigation established that although nearly half of the female employees in the Supplies Department were black, the complainant had been the only black male to be hired by the manager. In addition, many other staff members had occasionally been late or had varied the sequence of deliveries, but no disciplinary action had been taken. This evidence substantiated the allegations of the complaint.

In conciliation, the respondent agreed to compensate the complainant in the amount of \$2,600 for earnings lost due to discrimination, to provide him with a letter of reference and to post Code cards in public areas of the hospital.

A black machine operator alleged that he and other black employees were laid off because of shortage of work and were later dismissed. Despite repeatedly calling and visiting the plant asking for work, he was not rehired. Meanwhile, he claimed that he had learned of several white workers on lay-off who were rehired and others who were newly employed. He was informed by a co-worker that the employer had said he would not hire any more blacks because of the poor work records of two former black employees. The complainant, who had an excellent work record, filed a complaint alleging discrimination in employment because of race and colour.

During investigation, the employer claimed that although the complainant had been a good worker, he had not been rehired because the machine he used to operate was being phased out and he was considered to be unqualified to work with other machines. However, no evidence was found to support this claim, and the complainant had not been given the opportunity to try other machines.

The evidence indicated that the company had indeed recalled some of the white workers and had hired additional white operators. Also, company records showed that the proportion of black employees had decreased from 25 per cent to 10 per cent in the year preceding the complaint. All of these factors helped to substantiate the allegations.

In conciliation, the complainant said he did not wish to return to work for the company. The respondent agreed to compensate him for lost wages in the amount of \$6,500, and provided the Commission with written assurances of its non-discriminatory policy.

The complainant, a white Canadian-born male, had been employed as a waiter in a hotel for seven months. In his complaint, he alleged that he was laid off while a less-qualified Filipino waiter with less seniority was kept on, his hours were reduced after

his recall and other workers with less experience and seniority had their hours increased, and that he was eventually placed on indefinite layoff in spite of the fact that other waiters more junior to him were retained.

He believed that these events occurred because of his nationality, ancestry and ethnic origin, and therefore filed a complaint with the Commission.

During the investigation, the respondent supplied personnel records that indicated that the reduction in hours was due to business decline and was universally applied to all waiters whose seniority was equal to or less than the complainant's. In addition, the Filipino waiter's work performance and attendance record was found to be superior to the complainant's. With respect to the allegation that workers with less seniority had their hours increased while the complainant's were reduced, documentation showed that no workers with less seniority than the complainant were given longer shifts.

When conciliation discussions did not result in a settlement, the Commission considered the file and dismissed the complaint, providing the parties with the following reasons:

- Several of the allegations reflected inaccuracies, to which the complainant had later admitted. He had conceded that the grounds alleged were not factors in the events that had occurred, but he was not willing to enter settlement discussions. The Commission was of the opinion that the subject matter of the complaint was vexatious and made in bad faith;
- several of the alleged incidents were more appropriately dealt with under the collective agreement and the Labour Relations Act.

The two complainants, who are of German and Pakistani origin respectively, began working as machinists for the respondent in 1981. They alleged that they had received no complaints about their work performance during their first two years with the company. However, in 1983, they claimed that a new Italian foreman began to criticise their work and to give special privileges to the Italian workers in the complainants' area of the plant. Shortly thereafter, the complainants were told that their rates of production were inadequate, and their services were terminated.

One of them was then informed by a co-worker that an advertisement for a machinist appeared in an Italian newspaper, and the job was filled by an Italian applicant. He filed a complaint alleging discrimination in employment against the company and the foreman because of ethnic origin and place of origin.

The investigation revealed that with the appointment of the new foreman in 1983, the company instituted a program to improve production and work performance. As a result, a number of employees, including the complainants, had unsatisfactory areas of performance brought to their attention. However, the evidence indicated that the foreman tended to favour Italian employees, and that he was unduly harsh with their non-Italian counterparts in issuing corrective action reports about their performance. With respect to the job advertisement, the respondent stated that it

was cheaper to advertise in the Italian newspaper than the English-language daily paper. These and other factors supported the allegations.

In conciliation, the officer discussed the application of disciplinary procedures with the respondent and the foreman in question, pointing out that an uneven application of company policy constitutes unequal treatment under the Code and undermines employee morale and productivity. Also, placing job advertisements in one minority ethnic newspaper tends to have a differential impact on other groups in terms of equality of opportunity.

The following terms of settlement were agreed to among the parties:

- The employer will advertise in the daily English-language newspaper or in several minority ethnic papers;
- management and supervisory staff will attend a human rights seminar at the work place, and the foreman named in the complaint will also take a course in interpersonal communications and management - employee relations;
- the employer will post and enclose with pay cheques an invitation to all employees to attend a seminar on human rights in employment, to be conducted by the Commission's staff;
- the employer will notify employees of the procedure to follow for bringing instances of unfair discipline to the attention of management.

Because the complainants had found other positions, they did not seek reinstatement.

The complainant, a black man originally from Guyana, alleged that he was subjected to harassment by his supervisor and finally dismissed. He claimed that he received reprimands for conduct that went unnoticed when practised by other workers and was frequently assigned extra duties. His complaint alleged discrimination in employment because of race, colour, place of origin and ethnic origin.

During the investigation, several supervisors indicated that the complainant had been dismissed because of poor work performance. The allegations regarding differential treatment could not be substantiated, and no other non-white worker was aware of discriminatory practices within the company.

In conciliation, the complainant acknowledged that the evidence did not support the allegations, but he insisted that the employer should nevertheless be forced to provide him with a monetary settlement. In addition, he had filed numerous grievances relating to allegations of harassment and favouritism during his employment, and none of them had been upheld.

Because a settlement could not be reached, the Commission reviewed the complaint, and dismissed it because the evidence indicated that discrimination had not occurred,

and that the subject matter of the allegations was vexatious and made in bad faith. Both parties received written reasons for this decision.

Sex, Sexual Harassment and Marital Status

A married woman was employed as an assistant manager in a large office. She alleged that her male counterparts were earning more than she was, despite the fact that their experience and length of service were similar to hers. She claimed that when she discussed the disparity with the manager, she was told that there was no need for her to be working in any event because her husband had a good income. She filed a complaint alleging discrimination in employment because of sex and marital status.

The investigation yielded evidence that there was an unexplained differential in the salaries paid to male and female employees in senior positions. In conciliation, the respondent agreed to compensate the complainant in the amount of \$4,250 representing earnings lost due to discrimination. In addition, the company agreed to revise its salary scales to ensure that employees are paid on the basis of ability and merit, without regard to sex or marital status.

The complainant had worked in production for the respondent company since 1979, and was promoted to lead hand in 1982. She alleged that she was demoted to production several months later, with the explanation that there was a shortage of work in the department. She was subsequently successful in a competition for a promotion, but alleged that she received inadequate training in this position, and was reassigned to production. She further claimed that women were excluded from certain jobs in the company. Her complaint alleged discrimination in employment on the basis of sex.

The investigation revealed that there were separate job classifications and lines of progression for male and female employees in two areas of the plant. In periods of lay-off, women were not able to bump male workers with less seniority from certain jobs and it was confirmed that women were excluded altogether from two other positions in the company. The investigation yielded evidence in support of the allegations.

Interviews with other employees disclosed the fact that the complainant had received less training than her male counterparts. Had the complainant received this training, she would probably have remained in this position on the basis of her seniority and experience. She would then have been able to bump male co-workers with less seniority.

In conciliation, the respondent agreed to place the complainant in the next available position in the department to which she had been promoted, and to remove all restrictions affecting women in positions at the company. In future, all employees will be assigned to jobs in accordance with the master seniority list, without regard to their sex.

A clerical worker for a department store alleged that she was sexually harassed by her supervisor, and, that as a result of reporting these incidents to management, she was passed over for a supervisory position in the same department by a less qualified candidate. She further alleged that her services were terminated several weeks after the harassment had occurred. She filed a complaint alleging harassment and discrimination in employment because of sex.

During the Fact Finding Conference, the respondent claimed that the complainant had been dismissed because of poor work performance. Because an agreement on the issues in dispute could not be reached, an extended investigation of the complaint was conducted.

Two other employees indicated that they had similarly been subjected to unwelcome advances by the supervisor. An examination of company records revealed that the complainant's qualifications for the supervisory position were superior to those of the successful candidate, and job performance appraisals indicated that her work record was unblemished. The weight of the evidence supported the allegations of discrimination.

These findings were reviewed with the parties, and, in conciliation, the following settlement was agreed upon:

- The complainant's dismissal was revoked and she was reinstated with full seniority and benefits;
- the complainant was compensated in the amount of \$2,650, representing earnings lost during the period prior to her reinstatement and damages for insult to her dignity.

The complainant began her employment with a large manufacturing firm as a junior secretary in 1976. She alleged that she was promoted to the position of executive secretary to the company's vice-president in 1983. She claimed that her new employer subjected her to sexual advances and solicitations despite the fact that she made it clear to him that this conduct was unwelcome. She further alleged that when she brought the situation to the attention of the president, no action was taken to correct the problem. She resigned her position when her efforts to deal with the problem failed, and filed a complaint alleging harassment in the workplace because of sex.

During the Fact Finding Conference, the respondent did not dispute the complainant's account of the events that had occurred and her efforts to seek redress. The company and the personal respondent indicated their willingness to endeavour to effect a settlement of the complaint.

Accordingly, the complainant received monetary compensation in the amount of \$6,000, representing earnings lost due to discrimination and damages for mental anguish. The employer agreed to issue a management directive to all staff, prohibiting sexual harassment of employees.

The complainant alleged that she was hired in 1981 as a junior auditor in a large manufacturing company, but was dismissed two days later by the general manager because he did not want women working on the night shift. When the complainant advised the general manager that she had approached the Commission about the matter, she was immediately rehired.

From then on, the complainant believed that she was evaluated and treated more harshly than male employees in the Audit Department, and she claimed that she received reprimands for conduct that went unnoticed among the male staff members. She further alleged that when she and a number of junior male auditors were promoted, she was the only one in the group not to receive a raise.

Several months later, the complainant was dismissed on the grounds of poor work performance. She claimed, however, that she had been told that she was well-liked by clients and co-workers alike, and that she had never received warnings about her work record. She filed a complaint alleging discrimination in employment because of sex.

During the investigation, the respondent supplied documentation that revealed financial errors for which the complainant was responsible. The evidence also indicated that all staff members were reprimanded for actions that were contrary to company policy. In addition, payroll records showed that the male auditors who were promoted with the complainant did not receive pay increases because all salaries had been frozen until organizational changes were made. The respondent did not dispute the fact that the complainant was well-liked by members of staff and the public.

When conciliation efforts failed to achieve a settlement the Commission reviewed the complaint. The case was dismissed and both parties were informed that the evidence showed that the complainant's sex was not a factor in the employer's treatment of her, and that the terms and conditions of employment were the same for both men and women.

Handicap

The complainant alleged that when he was hired as a part-time baker, he was informed that he would be considered for full-time employment if he were given a clean bill of health by the company physician. The medical report indicated that he had a slight hearing impairment. The complainant claimed that he then sought the opinion of a hearing specialist to whom he was referred to by his family doctor. The specialist indicated that his hearing was within normal range, but the company did not consider the second opinion and kept the complainant on part-time employment. The man's complaint alleged discrimination in employment because of handicap.

During the Fact Finding Conference, the employer stated that it was the company's policy not to consider anyone for permanent full-time employment whose health was considered to be poor in any way. The company acknowledged receipt of the independent medical report, but did not take it into consideration. These factors supported the allegations.

As a means of settling the complaint, the following proposals were agreed to by all parties:

- Because the complainant was successful in the test, he was placed in full-time employment at the respondent

company within one week of the Fact Finding Conference, subject to demonstrating the ability to perform the essential duties and requirements of the job;

- the complainant received \$1,600 in compensation for lost wages;
- the complainant agreed to a job-related test by an audiologist at the Canadian Hearing Society prior to placement in full-time employment. The results of the test were to be communicated to the company;
- the company agreed to revise its policies and procedures with regard to medical examinations, to ensure that they are directly related to an applicant's ability to perform the essential duties of the job.

The complainant was hired as a warehouse worker, and after a pre-employment medical he was advised by the company doctor that he had hypo-thyroidism. The complainant alleged that he made an appointment with a specialist in internal medicine, but before he could keep it, he was dismissed because of his medical condition. The employer felt that the condition placed him at risk, despite advice that he had never experienced any health problems.

Following the specialist's examination several days later, the complainant was advised that he would have to take medication for the rest of his life, but that his condition would not interfere with his performing any kind of job, including the one in question. The complainant telephoned the employer to advise him of this fact, but he was told that his services were no longer required.

The man filed a complaint alleging discrimination in employment because of handicap.

During the Fact Finding Conference, the respondent admitted unintentionally discriminating against the complainant. In conciliation, the following proposals were agreed to by the parties:

- Reinstatement of the complainant effective in four months at the same salary and seniority;
- monetary compensation in the amount of \$5,000 to cover lost wages from the date of dismissal until reinstatement;
- a letter of apology to the complainant and written assurances to the Commission of the company's non-discrimination policy;
- the employer would not allow the complainant's present handicap to be a factor in considering him for any future positions with the company;

- the complainant agreed to assume full responsibility for his handicap by taking his medication daily;
- the complainant's personnel file would be cleared of any reference to the complaint.

The complainant alleged that he was denied a position as a dishwasher because he had a fused hip and used a cane, despite his claim that he was able to perform the job. He filed a complaint alleging discrimination in employment because of handicap.

During investigation, the job description of dishwasher was reviewed and staff of the respondent were observed performing in the job. The evidence indicated that the job required the ability to lift and carry 25-kilogram weights and to stand for eight hours at a time under hot and physically demanding conditions. The evidence established that the complainant would be unable to perform the job.

When a settlement could not be achieved in conciliation, the case was reviewed by the Commission. It was decided to dismiss the complainant, and the parties were provided with the following reasons:

- The evidence indicated that the complainant's handicap and reliance on a cane rendered him unable to perform the essential duties of the position.

Age

A 56-year-old woman alleged that she was hired as a labourer in 1947 and had progressed to head shipper about 10 years before filing her complaint. She stated that she had received no criticisms regarding her work performance. She alleged that a new manager had made it known that he wished to get rid of the older employees and bring in some "new blood". Shortly after he began at the company, three older employees were released.

In her complaint, the woman alleged that the manager told her that she was laid off because of a reduction of staff in her department. She claims that her position was filled by a younger man who had worked part-time for the company.

Of 10 employees interviewed during investigation, seven stated that they had knowledge of the manager's wish to release older employees. It was confirmed that the younger part-time employee was told about his promotion the day after the complainant was released. An examination of company records revealed that by the time of the complainant's lay-off, business had increased some 75 per cent over the previous year. This evidence substantiated the allegations of the complaint.

During conciliation, the vice-president of the company stated that he had no knowledge of the managerial cut-back. He said that had he been consulted about the complainant's release, he would have objected to it in view of her length of service and good work performance.

As settlement, the respondent agreed to:

- Compensate the complainant in the amount of \$9,500 for earnings lost and insult to her dignity, post Code cards on the business premises, and provide the Commission with written assurances of its policy of non-discrimination.

A 56-year-old accountant alleged that he had begun his employment with the respondent in 1975. He alleged that in 1983, the company changed ownership, and shortly thereafter, a new management team reassigned several older workers to less responsible duties in the company and replaced them with younger men. Several months later, the complainant was dismissed, with the explanation that the Accounts Department was undergoing reorganization. He filed a complaint alleging discrimination in employment because of age.

The investigation revealed evidence that six members of the administrative staff had either been demoted or released since the new management had taken over the company. Five of them were over 50 years of age, and all had good work records. The complainant's position was filled by a 39-year-old male, whose duties were only slightly different from those of the man he replaced. These factors supported the allegations.

In conciliation, the following settlement was reached among the parties:

- The complainant would be compensated in the amount of \$2,000 representing \$1,200 for earnings lost due to discrimination and \$800 for insult to his dignity;
- management employees of the respondent company would participate in a human rights seminar conducted by the Commission;
- a policy of non-discrimination in employment practices would be issued to all employees;
- Human Rights Code cards would be posted on the business premises.

Record of Offences

The complainant alleged that he was refused employment as a sales representative of a manufacturing firm because he had a record of offences, for which he had been pardoned. His complaint also stated that he was required to complete an employment application form on which inquiries were made as to whether the applicant had a record of offences and whether he was bondable.

The investigation revealed that an insurance company had agreed to bond the complainant and that he was qualified for the position in question. There was no evidence to indicate that the complainant's record of offences was a reasonable and bona fide qualification because of the nature of the position.

During conciliation the employer agreed to offer the complainant the next available position for which he qualified and to compensate him in the amount of \$800 for earnings lost as a result of discrimination. In addition, the respondent amended its application form to ensure that it complied with the provisions of the Code.

Creed

The complainant alleged that a trade publication catering to medical practitioners discriminated on the basis of creed by publishing two employment advertisements seeking Christian applicants for positions in a clinic.

Both the magazine and the advertiser were informed that the advertisements contravened section 22(1) of the Code, which provides that the right to equal treatment with respect to employment is infringed where an advertisement for employment is published or displayed that directly classifies or indicates qualifications by a prohibited ground of discrimination.

The investigation disclosed no indication that creed was a reasonable and bona fide qualification because of the nature of the employment.

The employer agreed to discontinue the advertisements and the publication notified the Commission that new procedures were being instituted regarding the acceptance and screening of classified advertising. In addition the magazine published an apology and a statement of its policy regarding advertising in its next edition.

Reprisal

A woman of Italian descent alleged discrimination in employment on the basis of her ethnic origin. She later filed an additional complaint alleging that the employer had terminated her services on learning that she had filed the first complaint.

It was established during the Fact Finding Conference that the complainant's employer had told her to withdraw the first complaint. She alleged that on the day that it was served on him, she asked him if he was prepared to remedy the situation that resulted in the complaint. When he refused to discuss the matter, she approached the Commission. The employer then released her from the company. These factors supported the allegations.

In conciliation, the employer agreed to compensate the complainant in the amount of \$650 representing one week's lost wages and damages for insult to her dignity. She did not want to be reinstated in her former job because she had found employment elsewhere. The respondent also issued a directive to managers that discrimination would not be tolerated at the company, and prohibiting reprisal action against any employee who takes part in a complaint under the Code.

ACCOMMODATION

Sex, Marital Status, Handicap, Age, Receipt of Public Assistance

A woman alleged that she and her husband, who was a student, filled out an application form for a vacant apartment. She claimed that she was told the couple

was ineligible because the husband was not the principal wage-earner, and the rent would be difficult to meet if she were to become pregnant and leave her job. Her complaint alleged discrimination in accommodation because of sex and marital status.

The investigation disclosed the fact that the couple's income of \$1,400 a month was more than adequate to pay the monthly rental of \$369. The manager of the building had not checked the couple's references in the town from which they had just moved because of a policy not to call out-of-town references. The building manager stated that he "rubber-stamped" the rental decisions made by the superintendent, who indicated that she was unaware of the legal provisions for maternity benefits. In addition, the application form contained questions relating to sex and marital status that contravened the Code. This evidence substantiated the allegations of the complaint.

In conciliation the parties agreed to the following terms of settlement:

- The couple received monetary compensation in the amount of \$240, representing the difference between their present rent and the rental on the apartment in question over a period of six months;
- the respondent undertook to revise its application form in order that the questions would not differentiate on the basis of sex or marital status;
- the respondent provided the Commission with written assurances of its non-discriminatory policy.

Because the couple had located suitable alternative accommodation they did not seek an offer of the next available apartment in the respondent's building.

The complainant alleged that she was refused accommodation in an apartment building because she has a guide dog. Her complaint alleged discrimination in accommodation because of handicap.

During investigation the respondent did not deny that the complainant had been refused accommodation. He claimed that she was refused a unit because there was no evidence at the time that she was blind, there was no evidence to show that the dog was a guide dog and there were no indications to show how the dog's defecation would be controlled.

The complainant provided evidence that enough information had been given to the rental agent to determine whether or not she was blind, that she did have a registered guide dog and that the guide dog would be well cared for. The evidence indicated that discrimination as alleged had occurred.

In conciliation, the respondent agreed to:

- Pay the complainant \$500 in compensation for out-of-pocket expenses incurred because of discrimination, write a letter of apology to the complainant, and offer her the next available apartment in the building.

A 20-year-old man and his 19-year-old fiancée applied in person for an apartment that had been advertised. The couple alleged that they provided a cheque for the first and last months' rent. Later, they were told that their application was not successful. Upon asking why, the superintendent stated that it was because of their ages. When they approached the property manager, they were informed that there were better applicants to choose from, and a 34-year-old male had been selected. The couple filed a complaint alleging discrimination in accommodation because of age.

During the investigation, the applications of current tenants were examined and were found to be similar to those of the complainants in all material respects, such as income. It was also established that the complainants' application was rejected before the successful applicant's form was even received.

The property manager stated that he believed older applicants were more likely to have a record of stability as tenants. These factors supported the allegations.

In conciliation, the respondent agreed to place the couple in the next available apartment and to post Code cards in the apartment building.

A couple alleged that they applied for an apartment, and supplied evidence to the superintendent that their combined social assistance benefits would more than cover their rent and expenses. They stated that they were seeking accommodation because their landlord was converting their present apartment to his own use. After consulting with the owner of the building, the superintendent informed the couple that they did not qualify for the apartment because they were unemployed. Their complaint alleged discrimination in accommodation because of receipt of public assistance.

The investigation revealed that the couple had a good record as tenants and were able to meet the rental payments. During conciliation, the landlord was informed that a policy to exclude unemployed applicants has an adverse impact on persons receiving public assistance, even though this might not have been intended by management.

The landlord agreed to compensate the complainants in the amount of \$400 to cover their moving expenses and damages for insult to their dignity. As further settlement of the complaint, the landlord agreed to offer the couple the next available apartment in the building and to write them a letter of apology. Written assurances of an intent to comply with provisions of the Code were provided to the Commission, and Code cards were posted on the premises.

GOODS, SERVICES AND FACILITIES

Race, Colour, Ethnic Origin, Handicap

The complainant, a woman originally from Pakistan, was one of 12 students in a registered nursing assistant course. She alleged that the instructor treated the seven immigrant and non-white students in a discriminatory manner by ignoring the questions they raised in class and failing to explain material adequately when they

sought assistance. She claimed that when she and several of the other students approached the course director about the problem, they were told that they were "too sensitive", and unable to accept criticism.

During the investigation, other students in the course indicated that they felt the complainant and several other non-white immigrants were not given the same kind of positive support, encouragement and opportunity to succeed as was given the white students who had been fully educated in Canada. It was also learned that the immigrant students were disciplined for not handing in assignments on time, while their counterparts were not. The weight of the evidence supported the allegations.

During conciliation, the complainant informed the teacher and the course director that she had found employment and would be leaving the school. She stated that she only sought a face-to-face verbal apology from the teacher for the humiliation she had suffered. Both the teacher and course director apologized to the complainant, and provided both the complainant and Commission with assurances that all students would be treated equally and with respect, without regard to race or ethnic origin.

A black woman entered a clothing boutique and asked to try on a dress. She alleged that the store owner told her she would have to pay \$150 before being allowed to try it on. The complainant protested and asked if everyone had to pay before trying on a dress. The owner allegedly replied that she only did this when dealing with the complainant's "type". The owner then related a previous incident involving a black woman who had put oil on her body before trying on a dress and damaged it. The complainant became upset at the insinuation that she would damage the dress, and started to cry. The respondent owner called security and had her removed from the store. She filed a complaint with the Commission alleging discrimination in goods, services and facilities because of race and colour.

The respondent did not dispute these allegations during the Fact Finding Conference. She also admitted that on the day of the incident, other customers had been allowed to try on dresses without first paying money. Although the respondent denied that she treated the complainant in that fashion because of her race and colour, she was not able to provide any satisfactory alternative explanation as to why she had treated the complainant that way.

In conciliation, the respondent agreed to provide the complainant with a letter of apology, allow her to choose a dress of \$150 value, and to write a letter to the Commission containing assurances of her non-discriminatory policy.

A Native Indian woman alleged that she was harassed, while shopping, by an employee of a department store. In the complaint she filed with the Commission, she alleged that the employee called her a racially derogatory name and looked through her shopping bag. She claimed that she reported the incident to the manager, but he refused to resolve the matter. Her complaint alleged discrimination in services, goods and facilities because of race, colour and ancestry.

During the Fact Finding Conference, the manager acknowledged that the store employee had harassed the complainant, and that he had had no reason to suspect

that she had stolen goods from the store. The evidence substantiated the allegations of the complaint.

In conciliation, the parties agreed to the following terms of settlement:

- A human rights seminar was arranged for management employees of the store;
- the manager issued a written warning to the employee in question that further evidence of racially motivated harassment would result in his dismissal;
- a letter of apology was sent to the complainant;
- the respondent placed Code cards on the premises and provided written assurances to the Commission of its non-discriminatory policy.

A mentally retarded resident of a Group Home alleged that when he and a friend visited a tavern and dining lounge, they were told that they could only sit in the dining area of the restaurant. When he questioned the policy, he claimed that he was informed that, in the past, another resident of the Group Home had become intoxicated and caused a disturbance in the lounge. As a result, no residents of the Group Home could be served drinks there. His complaint alleged discrimination in goods, services and facilities because of handicap.

During investigation, the allegations were confirmed. The manager stated that the policy had been in effect for a year, and that the residents of the Group Home had not objected to it.

The conciliation meeting was attended by both the complainant and respondent, as well as a member of the District Association for the Mentally Retarded and a counsellor from the Group Home. The importance of the ability of handicapped persons to function normally in the community was discussed, and the counsellor indicated that the residents of the Group Home were capable of handling themselves responsibly in social situations. The respondent admitted that he had applied a negative stereotype about disruptive behaviour to the complainant and his friend. He stated that he wanted to engage in a continuing dialogue with representatives of the Association and staff of the Group Home so that further problems could be avoided. In settlement, it was agreed that the complainant and other residents of the Group Home would be served in any area of the restaurant without discriminatory treatment, and with no restrictions other than those applying to all patrons under the Liquor Licence Act. In addition, staff of the Group Home and the Association would advise the respondent in the event that a resident should not be served alcoholic beverages because of an incompatibility with medication or behavioural problems.

DECISIONS OF BOARDS OF INQUIRY

1983/84

EMPLOYMENT

Race, Colour, Nationality, Ancestry, Place of Origin

Ahluwalia and Metropolitan Toronto Board of Commissioners of Police and Inspector W. Dickson

Mr. Ahluwalia, a police constable originally from India, alleged that he was subjected to racial name-calling by his fellow police officers, was refused reclassification and finally dismissed because of his race, colour, nationality, ancestry and place of origin.

Testimony at the hearing revealed that pervasive name-calling among constables was commonplace. "It is clear that the sergeants knew of it, and while they did not indulge in name-calling or approve of it being used in a derogatory context, they did nothing to stop it," the board chairman stated. The board pointed out that it is not enough simply to take refuge in a paper policy of racial tolerance; there must be a reasonable monitoring of such a policy, with discipline procedures undertaken for known violations.

The board was persuaded by the evidence of Dr. Granville A. DaCosta, a psychiatrist with expertise in the effects of racism on the adaptation of immigrant groups to Canadian society.

Dr. DaCosta testified that, given the sociological perceptions of names such as "Paki" and "Nigger," name-calling is necessarily injurious, unless the parties tacitly agree to use the names in a relationship of mutual respect. No such tacit agreement existed between Mr. Ahluwalia and other officers.

During his testimony, Dr. DaCosta described name-calling as a process through which its victim is assigned a lower status in an inferior-superior type of relationship. Where a working atmosphere of name-calling is socially reinforced by others, its harmful impact on the victim's self-esteem and equal participation in the work group is strengthened.

The board chairman stated that name-calling can never be characterized as casual interplay or shop-talk, due to its harmful effects on its victims.

While not all name-callers consciously intend to hurt their victims, name-calling may represent an antagonistic behaviour that is in the guise of fraternal, joking behaviour. The derogatory label controls the status of the person named, by evoking the myths, negative stereotypes and value judgements that are inherent in the label.

However, although the name-calling constituted racial harassment, this was not a key factor in Mr. Ahluwalia's not performing his job up to the required standard. The board of inquiry found on the evidence that the complainant was not reclassified and was eventually dismissed because of unreliable and incompetent work performance. Accordingly, these allegations were dismissed.

With respect to the finding of racial name-calling amongst police officers, the inquiry chairman ordered the respondent to do whatever is reasonably necessary to eliminate it. As one means of achieving this objective, the respondent was ordered to establish an ad hoc race relations sensitization program to be designed, conducted and delivered in conjunction with the Ontario Human Rights Commission. This program is now being carried out.

Almeida and Chubb Fire Security Division of Chubb Industries Ltd.

Mr. Almeida, who had been employed by the respondent as assistant controller for six years, alleged that the company had engaged in discriminatory acts by failing to promote and ultimately by dismissing him because of race, colour, nationality, ancestry and place of origin. The complainant is of East Indian ancestry and was born in Tanzania.

During the hearing, the complainant testified that four new controllers were hired by the respondent. In each instance, a white male was appointed to the position despite the fact that the complainant believed that he was well-qualified to assume the post. The respondent, on the other hand, testified that Mr. Almeida's performance as assistant controller did not warrant promotion to controller, and that his performance deteriorated significantly during the latter period of his service.

The board heard evidence that Mr. Almeida had undertaken many extra duties and responsibilities during the periods when the controller position was vacant, and management employees testified that he had performed them admirably.

Several executives of the company provided reasons for their decisions not to promote the complainant on the four occasions when a replacement was sought for the controller position. The board concluded that there was no evidence introduced at the hearing that would substantiate the defences offered by the respondent.

Moreover, the board chairman heard testimony that indicated, in his view, that a number of middle management employees, who had some responsibility for making employment decisions, had formed the opinion that additional hirings of non-whites would not be viewed favourably by some of the senior managers. The board found that discriminatory considerations had had a role in the decision-making process that led to the appointments of three of the four controllers hired during the complainant's period of employment.

With respect to the first such appointment, which was made shortly after Mr. Almeida began with the company, the board concluded that there is some likelihood that he would have been rejected on the ground that he had not yet completed his degree in Registered Industrial Accounting.

The board then addressed the allegations of discriminatory dismissal, which took place several months after the appointment of the fourth new controller. The board found that the complainant's attitude towards his employer and towards his work had deteriorated after the decision was taken to appoint the new controller, and the chairman stated, "Mr. Almeida was evidently very frustrated at his lack of success and had apparently finally resolved that he would no longer fully cooperate with the incumbents of the controller position." The board concluded that the dismissal was not based on discriminatory considerations.

Having found a breach of the Code, the board ordered the following:

- The respondent is liable to pay to the complainant forthwith an amount representing the difference between the salary received by Mr. Almeida for the period from the appointment of Mr. Bartlett as controller in March of 1976 to the appointment of Mr. Horner as controller in September of 1978 and the salary he would have received if he had been at the rate paid to incumbents of the position of controller of the respondent during this period.

The board remained seized of jurisdiction in the matter for 60 days to dispose of any other difficulties that might arise in the implementation of the order.

Foster and the Queen Elizabeth Hospital

After two months of employment as a cleaner, Mrs. Foster alleged that she was dismissed from her employment in July 1978 because of her race and colour. She filed a complaint with the Commission, and the matter was settled in conciliation when the respondent agreed to reinstate Mrs. Foster in her former position.

Mrs. Foster later alleged that she was released by the hospital after eight months in the position, because she had made a complaint under the Code in connection with her first dismissal.

During the hearing, Mrs. Foster's former supervisor denied her allegation that he had told her that she was dismissed because she had filed a complaint against the hospital. Witnesses for the respondent then provided as evidence personnel records indicating that the complainant's work performance had been called into question on five occasions. However, Mrs. Foster testified that she had never received complaints about her work.

The board found that the complainant's inadequate work performance was the basis for the hospital's decision to terminate her services. The board chairman observed, however, that her employer did not give Mrs. Foster verbal or written notices of unsatisfactory work, nor did he follow a system of progressive discipline: "I agree with counsel for the complainant and Commission that Mrs. Foster's dismissal (by the hospital) was abrupt, sudden and without prior notice." The complaint was dismissed.

Mears, Walker, Wills, Trotman, Atherly, Telphia, Francis and Ontario Hydro, Watson, Watkiss, Ouellette, Loveness

The complaints were filed by seven black workers following the layoff of 23 employees by Ontario Hydro from the construction of the South Pickering Nuclear Plant. Eight of the 23 employees were black, and the seven complainants alleged discrimination in employment because of race, colour, ancestry or place of origin.

The issues addressed by the board of inquiry were whether the implementation of the layoff system used by Ontario Hydro contravened the Code, and whether and to what extent Ontario Hydro is responsible for any discrimination that may be proven against its foremen or management at the South Pickering Plant.

The evidence indicated that the seven complainants, and an additional white employee who was laid off, had been members of crews headed by Messrs. Watson, Watkiss, Ouellette and Loveness. Four of the complainants were working on the Watson crew at the time of the layoff.

During the hearing, a number of witnesses testified that five of the complainants had superior work records to some of the white employees who were not laid off, and four of the complainants claimed that Mr. Watson had revealed negative prejudices and stereotypes regarding black workers in his dealings with them. Witnesses for the respondents testified that there were problems with the work performance of three of the complainants.

Management employees testified that the standard procedure for the implementation of layoffs is for each foreman to rank the members of his crew. The board observed, however, that each of the witnesses who testified for Ontario Hydro gave varying criteria that they believed had been used by the foremen in their rankings. Evidence also indicated that the foremen kept no written records about the productivity or quality of work of their crew members, and did not use objective, standardized criteria to assess their members on a day-to-day basis.

The board concluded on the basis of the evidence that the layoff of 23 employees was motivated by financial circumstances. However, the chairman found that Mr. Watson had a considerable amount of discretion and influence with respect to the layoffs of complainants Mears, Trotman, Walker and Wills. The board concluded that there is ample evidence that discrimination against blacks was an aspect of Mr. Watson's assessment of the four complainants at the time of the layoffs, and that his previous actions towards these employees indicated a discriminatory attitude towards black persons.

In addition, the board chairman stated that, "Ontario Hydro must assume responsibility for the actions of its foremen and superintendents at South Pickering, because of both the authority it vested in these employees and the ineffective personnel policies that were in force at South Pickering. I also hold Ontario Hydro directly responsible for the discrimination against these complainants."

The board found insufficient evidence to prove that discrimination was an aspect of the ranking or layoff of complainants Telphia, Atherly or Francis.

Having found that discrimination had occurred the respondents were jointly and severally ordered by the board to compensate the complainants as follows:

Wills: \$9,129.60 in compensation for lost wages, general damages and interest.

Mears: \$9,129.60 in compensation for lost wages, general damages and interest.

Walker: \$4,392.00 in compensation for lost wages, general damages and interest.

Trotman: \$4,392.00 in compensation for lost wages, general damages and interest.

The respondent was also ordered to post copies of the Human Rights Code in conspicuous locations at the South Pickering Nuclear Plant. The respondents have filed a notice of appeal from the decision and order in the Supreme Court of Ontario, Divisional Court.

Ontario Human Rights Commission and Cyrville Taxi

A complaint was initiated by the Commission against the company in response to a newspaper survey that alleged that the respondent, along with a number of taxi-cab companies, was willing to comply with customers' requests for a white driver. The complaint alleged discrimination by Cyrville Taxi against its taxi-drivers because of race, colour, ancestry and ethnic origin.

Because the respondent did not cooperate with the Commission's attempts to investigate the allegations, the Commission sought the appointment of a board of inquiry under section 32 of the Code, which provides that if a respondent impedes or prevents an investigation, the Commission may request a board of inquiry.

The board concluded, on the basis of the evidence before it, that no rights under the Code had been infringed. However, the board chairman stated, "It is important to emphasize that this result should not be erroneously interpreted as condoning, in any way, the practice of consenting to requests by potential customers for drivers of a certain colour or ethnic origin. Customer preference is entirely irrelevant in assessing conduct which might be in contravention of the Code."

Watson and Highway Trailers of Canada Ltd., Smith

Mr. Watson's complaint alleged that he had been dismissed from his employment on the 49th day of his 50-day probationary period because of his race, colour, nationality, ancestry or place or origin. He is a black man originally from Jamaica. The complainant claimed that the company's manager, Mr. Smith, had stated that he was not interested in keeping blacks in his employ.

Evidence introduced at the hearing indicated to the board of inquiry that it was not an uncommon practice at the company to dismiss workers late in the probationary period, and that this decision had been made with respect to employees of all racial groups. Witnesses for the respondent testified that the complainant was the only non-white employee whom Mr. Smith had dismissed during his employment at Highway Trailers. In addition, Mr. Smith denied having made the comment about black workers, and claimed that Mr. Watson had been released because of poor work performance.

Nor did the evidence reveal an under-representation of non-whites in the respondent's work force, in the view of the board. However, the board was persuaded by the testimony of the complainant and two other non-white employees that Mr. Smith and another member of management had made several remarks of a racial nature that might well have led the complainant to believe that management was biased against blacks. The board concluded that such incidents were infrequent, and decided that the general thrust of the evidence indicated that the complainant had not been subjected to discriminatory treatment by his employers.

The board found, on the basis of the totality of the evidence, that the complainant's work performance was perceived to be unsatisfactory by the company's management, and that his dismissal appears to have been based on these considerations alone. The complaint was dismissed.

Sex, Sexual Harassment

Benel, Biljak, Estrada, Mejia, Munoz, Olarte and Commodore Business Machines Ltd., De Filippis

Six female employees at the Warden Avenue plant of the respondent company alleged that they had been sexually harassed by their foreman, Mr. DeFilippis, while working on the evening shift. Their complaints alleged that the foreman's conduct was carried out with the knowledge and acquiescence of the corporate respondent.

In addition, two of the complainants alleged that their employment was terminated because they had indicated their intention to make complaints under the Code. Five of the complainants claimed that they were dismissed or compelled to resign because of the harassment and their refusal to accept the foreman's advances.

In giving testimony at the hearing, witnesses for the respondents alleged a conspiracy on the part of the complainants to fabricate an account of harassment by Mr. DeFilippis against them.

The board heard evidence that the complainants worked the 4:00 p.m. to 12:30 a.m. shift and were supervised by the individual respondent, who was in charge of the plant during the evening hours. The complainants testified that Mr. DeFilippis persisted in his conduct despite their initial and continuing forcefully-stated objections to it.

The evidence of the complainants was corroborated by the similar fact evidence of five female witnesses. Male employees of the Warden Avenue plant provided further evidence in support of the allegations.

In addition, four female workers at the company's Pharmacy Avenue plant testified that the individual respondent made sexual advances towards them during a period when he was employed as a foreman there. The board concluded that no conspiracy took place among the complainants, on the basis of totality of the evidence. Moreover, the board chairman observed that none of the witnesses from the Pharmacy Avenue plant knew the complainants, nor had any knowledge of Spanish, which was the complainants' mother tongue.

The board chairman found that the individual respondent had contravened the Code, and he stated: "It is clear that Mr. DeFilippis tried to intimidate and manipulate the female workers he desired sexually. He was in a position, as he knew, of being able able to hire very dependent, immigrant female workers whom he could seek to take sexual advantage of."

The board found that the company did not know about the harassment of the complainants by the foreman. However, the board found that because the foreman's conduct arose in the course of acting as an agent of the company in the carrying on of its business, the company was itself liable for the harassment of the complainants. In providing a function of management as a foreman, Mr. DeFilippis was part of the "directing mind" of the corporation.

Although the board chairman concluded that no member of senior management personally condoned or acquiesced in the foreman's sexual harassment of the complainants, he found that where the employer is a corporate entity and an employee is part of its "directing mind," then the corporation is itself personally liable for the breaches of the Code by its employee.

Having found that discrimination had occurred, the respondents were jointly and severally ordered by the board to pay damages to the complainants, as follows:

Olarte: \$2,324 in compensation for lost wages, general damages and interest.

Biljak: \$2,800 in compensation for general damages and interest.

Estrada: \$2,800 in compensation for general damages and interest.

Munoz: \$3,696 in compensation for lost wages, general wages and interest.

Benel: \$3,696 in compensation for lost wages, general damages and interest.

Mejia: \$6,496 in compensation for lost wages, general damages and interest.

The individual respondent was ordered to cease and desist in the sexual harassment of female employees of the company, and the corporate respondent was ordered to do whatever is necessary to ensure that Mr. DeFilippis ceases and desists in such harassment. The decision and order of the board of inquiry is being appealed by the respondents to the Supreme Court of Ontario, Divisional Court.

Fullerton and Davey C's, Zantav Ltd., Relph

Ms. Fullerton alleged that after six weeks of employment as a waitress, she was dismissed because of her refusal to respond to the sexual advances of her employer, Mr. Relph, Assistant Manager of Davey C's. Her complaint alleged that she willingly accepted Mr. Relph's invitation for dinner two weeks after beginning her employment, but that this event led to a series of efforts on his part to develop an ongoing relationship with her against her wishes. She further claimed that he made attempts at sexual contact during working hours.

Mr. Relph denied the allegations in his testimony at the hearing. Several supervisory employees of the respondent stated that they had had concerns about the complainant's demeanour and attire, which were brought to her attention. The General Manager testified that he decided to release Ms. Fullerton because he believed her to be unsuitable for the position. He also stated, and the board accepted, that the General Manager was unaware of the relationship between Ms. Fullerton and Mr. Relph.

The board found that the corporate respondent's decision regarding the complainant's employment was unrelated to her sex or to Mr. Relph's alleged interest in her, nor did the evidence indicate that sexual harassment had occurred. The board chairman stated that in establishing proof of such conduct, a distinction must be made between an advance of a personal nature and sexual harassment that has become a condition of employment, and concluded that there was insufficient evidence to show that Mr. Relph treated the complainant in a fashion that went beyond that of a reasonable social involvement.

The board observed, however, that Ms. Fullerton was treated in an unprofessional manner by the management of Davey C's. "She was at no time told what the problems were with her appearance or service, and consequently she was never given the opportunity to improve herself. She received inadequate reasons for her dismissal," the board chairman stated. The complaint was dismissed.

Giouvanoudis and the Golden Fleece Restaurant & Tavern Ltd., Carras

Ms. Giouvanoudis alleged sexual harassment on the part of her employer, Mr. Carras, during her first day on the job as a waitress. She claimed that when she refused his advances, he dismissed her.

Five former employees testified at the hearing that they had experienced unwelcome sexual advances from the same employer, and had suffered negative employment consequences for rejecting these advances. Two other witnesses, who had worked as waitresses after the complainant, told the board that they had not been harassed by Mr. Carras, and the board concluded that this was due to the fact that their employment came after the complaint under the Code and the Commission's investigation. The board chairman stated, "The realization that the complaint was being investigated and would be pursued to a conclusion caused Mr. Carras to reform his ways with his employees."

Having found that sexual harassment had occurred, the board ordered the respondents to compensate the complainant in the amount of \$750 for mental anguish and \$250 for lost wages. The corporate respondent was ordered to do whatever is necessary to ensure that Mr. Carras ceases and desists in the sexual harassment of female employees.

Graesser and Porto

Ms. Graesser, a high school student, alleged that she was hired in a clerical position by Mr. Porto for the summer months. On her third day in the job, she claimed that her employer made verbal and physical sexual advances towards her, despite her efforts to convince him that the harassment was unwelcome. At the end of the day, she telephoned the Student Manpower Office and related her experience. She was advised to contact the Commission, and did so on the following day. She also telephoned Mr. Porto and resigned from her position.

During the hearing, a former employee testified that she had also been subjected to sexual harassment by Mr. Porto. The board of inquiry found this information to be relevant to the allegations, and declared it to be suggestive of a pattern of behaviour on the respondent's part. The board chairman noted that the complainant and this witness had never met, and had not discussed the matter.

The board found that the sexual advances had occurred, and were the cause of the termination of the complainant's employment. The respondent was ordered to compensate Ms. Graesser in the amount of \$375 in compensation for lost earnings, \$750 as damages for mental anguish, and to write her a letter of apology.

Pachouris and St. Vito Italian Foods, Patera

Ms. Pachouris alleged that she had been subjected to sexual harassment in the workplace by her employer during the two weeks of her employment as a waitress. She also alleged that she resigned from the position because her employer persisted in his verbal and physical advances.

The board concluded, on the basis of the evidence, that the Commission and the complainant had not discharged the onus of establishing the allegations made in the complaint.

Witnesses for the respondents, including other female employees, testified that they had not observed or experienced any sexual harassment by Mr. Patera. Several witnesses indicated that the working atmosphere was one in which vulgar comments and jokes were frequently exchanged among the employees and their employer, and claimed that the complainant had never objected to these remarks.

The complaint was therefore dismissed.

Winterburn and Lou's Place, Nadlin, Sheppard

Ms. Winterburn alleged that she was laid off her employment as a bartender after three months on the job and that she reapplied for the same position, which was advertised two weeks later, and was refused. Her complaint alleged discrimination in employment on the grounds of sex.

Several witnesses of the respondent testified during the hearing that a number of employees had been subject to layoff because of financial difficulties in the company. However, the complainant indicated that while other employees were given reduced hours, she was told that she must either be released or take a position as a waitress. She said that she did not take this offer seriously, because the waitressing position required wearing a revealing uniform, and she was in an advanced state of pregnancy at the time. She also alleged that her employer informed her that her pregnancy precluded working part-time as a bartender.

This allegation was denied by the respondent, who also indicated that a number of alternative positions were offered to Ms. Winterburn.

The respondent provided evidence that the advertisement which Ms. Winterburn responded to had been published in error, and the position had never been filled. The board accepted this evidence.

The board then addressed the issue of whether Ms. Winterburn's pregnancy was a factor in the respondent's treatment of her. The chairman held that refusal of employment or dismissal on the basis of pregnancy constitutes discrimination on the grounds of sex. However, in the present case, the board found that shortage of work for a full-time bartender was the basis for the complainant's layoff. In addition, there was evidence, in the opinion of the board, that Ms. Winterburn had been offered several employment alternatives, which she refused. The complaint was dismissed.

HOUSING

Race Colour Nationality, Ancestry, Place of Origin

Baldwin and Soobiah

Mr. Baldwin, a black man originally from Trinidad, alleged that his wife, who is of Belgian origin, telephoned in response to an advertisement for an apartment at a rental of \$300 per month. The couple viewed the premises at the invitation of the landlady and claimed that they were told that the rental amount was printed in error and the correct figure was \$350 per month. The landlady said she would telephone Mrs. Baldwin the following day after she had verified the advertisement.

The Baldwins claimed that the landlady then informed them that the \$300.00 was a misprint, and that in any event, she had just rented the apartment to another couple for \$350. The complainant then asked a friend with a Canadian accent to telephone the landlady and inquire about the vacancy. The friend was told that the apartment was still available at \$300 a month. Immediately thereafter, a Trinidadian friend called with the same inquiry, but was told that the apartment was taken. A third caller, with a Canadian accent, then telephoned and was told the apartment was still for rent. The next day, Mr. Baldwin filed a complaint with the Commission alleging discrimination in accommodation because of race, colour, place of origin and nationality.

During the hearing, several witnesses provided evidence to establish in the view of the board, a *prima facie* case of an intention by the respondent to discriminate against the complainant in refusing to rent the apartment to him because of the grounds alleged.

The respondent testified, however, that she was not at home when the three telephone inquiries were made, and she could offer no explanation of who had answered these calls. She further claimed that she rented the apartment on the day after the Baldwin couple's visit, for \$350 per month.

The board chairman found aspects of the respondent's testimony that raised doubts about its credibility, and stated, "We are left only with the respondent's assertion that she was not at home (when the calls were made) and with no corroborative evidence." The board accepted the testimony of the complainant, and found that the respondent did discriminate against the complainant by denying him occupancy of her apartment.

The board ordered the respondent to pay the sum of \$350 to the complainant, in compensation for insult to his dignity. The complainant requested that the cheque be made out to the Universal African Improvement Association, an organization dedicated to the improvement of race relations. The respondent has filed a notice of appeal from the decision and order in the Supreme Court of Ontario, Divisional Court.

STATISTICAL TABLES

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STATISTICAL TABLES 1983/84

A. COMPLIANCE CASES RECEIVED

Tables on cases received are indicators of the types and trends of complaints of discrimination by individuals and groups protected under the Code.

TABLES 1 and 2 Complaints Received by Ground and Provision, 1983/84 (1982/83)

Twelve hundred and thirty-seven cases were received in 1983/84. This figure represents an increase of 49% over the number of cases received in 1982/83. This total is the highest for cases received in any one-year period since the inception of the Code. The increase is evidenced in both new and more traditional grounds of discrimination. For example, complaints based on handicap increased by 134% over last year, sexual harassment increased by 31%, family status by 254%, race by 25%, age by 46% and sex by 28%.

The increases indicated reflect a greater public awareness of the legislation following the major educational campaign undertaken last year after the proclamation of the new Code, together with a renewed interest among members of the public in using the protections afforded by the legislation.

While employment complaints, at 76% of the total, continue to be the largest segment of the caseload, they are 5% less than last year, with services now comprising 11%, accommodation 9%, contracts 1% and reprisals 3%.

By the end of this fiscal year, sex (gender and sexual harassment combined) was the ground most frequently cited at 25% of the total cases followed by handicap and race at 23% each. These three grounds comprised 71% of the total number of cases filed.

TABLE 1A - Extensions of Code Provisions Also Cited in Complaints, 1983/84

These provisions, as contained in Parts II and III of the Code, are attached to and serve to extend the prohibitions in Part I.

Constructive discrimination was cited most frequently, in 44 cases, especially in reference to sex and handicap.

TABLE 1 - Complaints Received by Ground and Provision, 1983/84

Code Provisions:		Race/C Colour	Ethnic Origin	Sex	Age	Marital Status	Family Status	Handicap	Public Assistance	Record of Offences	Reprisal/Breach of Settlement	Percentages	
Ground:	Total												
Part I													
Services	47	9	5	15	-	8	2	9	41	n/a	n/a	-	136
Accommodation	30	8	1	7	8	8	9	18	6	14	n/a	-	109
Contracts	2	-	3	4	-	-	-	-	-	n/a	n/a	-	9
Employment	204	54	26	149	122	111	14	12	242	n/a	6	-	940
Vocational Associations	3	1	2	-	-	-	-	-	1	n/a	n/a	-	7
Reprisal	-	-	-	-	-	-	-	-	-	n/a	n/a	35	3
Breach of Settlement	-	-	-	-	-	-	-	-	-	n/a	n/a	1	1
Total Complaints Received	286	72	37	175	130	127	25	39	290	14	6	36	1,237
Percentage	23	6	3	14	11	11	2	3	23	1	-	3	100%
Extension of Code Provisions Also Cited in Complaints:													
Part II and III													
Constructive Discrimination	3	-	4	18	-	3	-	2	13	1	-	-	44
Association Discrimination	4	-	-	3	-	1	-	2	3	1	-	-	14
Announced Discrimination	-	-	-	-	-	-	-	2	-	-	-	-	2
Advertising	-	-	2	2	-	-	-	-	-	-	-	-	4
Application Forms	1	1	1	2	-	1	-	1	3	-	-	-	10
Employment Agencies	-	-	-	-	-	-	-	-	1	-	-	-	-
Employment Plans	-	-	-	-	-	-	-	-	-	-	-	-	1
Total Provisions Cited in Complaints Received	8	1	7	25	-	5	-	7	20	2	-	-	75

TABLE 2 - Complaints Received by Ground and Provision, 1982/83

Code Provisions:	Grounds:		Age		Sexual Harassment		Sex		Ethnic Origin		Sexual Harassment		Marital Status		Family Status		Handicap		Receipt of Assistance		Record of Offences		Total		Percentage	
	Race/Colour	Creed																								
Services	20	10	1	3	-	4	8	3	28	-	-	-	-	78	9											
Accommodation	24	2	1	1	-	4	9	3	4	7	7	-	-	55	7											
Contracts	2	-	-	1	-	-	1	-	3	-	-	-	-	7	1											
Employment	180	57	22	125	98	77	21	4	89	-	-	4	676	81												
Vocational Associations	2	1	-	3	1	1	-	1	-	-	-	-	-	9	1											
Reprisal	1	-	-	4	-	1	-	-	-	-	-	-	-	6	1											
Total	229	70	24	137	99	87	39	11	124	7	4	831	100%													
Percentage	27	8	3	16	12	11	5	1	15	0.5	0.5	100%														

TABLE 3 – Handicap Complaints Received by Type of Handicap, 1983/84

One hundred and twenty-four cases were received representing an increase of 134% over last year. The types of handicap cited were generally similar to those in 1982/83, with general diseases or disorders at 32% of the total number followed in descending order by impairments of limbs/digits and sensory impairments at 14% and 13% respectively. Employment was by far the area giving rise to most complaints, at 83%, representing an increase of 11% over 1982/83.

TABLE 3 – Handicap Complaints Received by Type of Handicap and Code Provision. 1982/83

Type of Handicap:	Code Provision:		1983/84		1982/83		Percentages	
	Accommodation	Services	Accommodation	Services	Accommodation	Services	Total	Vocational Associations
Sensory (vision/hearing/speech/etc. impairments)	10	2	-	26	-	38	13	6
Respiratory (asthma/lung diseases/etc.)	-	-	8	-	8	3	-	-
Limbs and Digits (amputation/impairment of limb/digit/etc.)	2	-	-	39	-	41	14	2
Cardiovascular (heart disease/hypertension/stroke/etc.)	1	-	-	8	-	9	3	-
Neuromuscular (dystrophy/sclerosis/cerebral palsy/quadriplegia/etc.)	12	1	-	7	-	20	7	10
Neurological (epilepsy/seizures/brain injury/etc.)	4	1	-	12	-	17	6	2
General Diseases or Disorders (back injuries/allergies/cancer/diabetes/hernia/etc.)	3	-	-	88	-	91	32	2
Miscellaneous (multiple handicaps/obesity/etc.)	2	-	-	28	-	30	10	4
Learning Disability (dyslexia/etc.)	1	-	-	2	1	4	1	-
Mental Retardation (or mental impairment)	1	1	-	3	-	5	2	1
Mental Disorder (psychiatric illness/personality disorders/addictions/etc.)	5	2	-	20	-	27	9	1
Total	41	7	-	241	1	290	100%	28
Percentage	14	3	-	83	-	100%	23	3

TABLE 4 - Complaints Received by Sex of Complainant and Ground

Males		Females	
1982/83 (New Code)	1983/84	1983/84	1982/83 (New Code)
108	171	Race/Colour	112
16	50	Ethnic Origin	22
12	24	Creed	12
21	42	Sex	130
-	4	Sexual Harassment	126
38	65	Age	62
6	8	Marital Status	17
4	19	Family Status	20
88	190	Handicap	95
1	4	Public Assistance	10
4	6	Record of Offences	-
2	16	Reprisal	19
-	-	Breach of Settlement	1
300	599	Totals	626
52%	49%		51%
			284
			48%

TABLE 4

Females filed more complaints than males in 1983/84, for the first time in the Commission's history. This was due, in part, to a significant increase in group complaints by females (plant workers) as well as an increase in allegations of sexual harassment.

TABLE 4A - Commission Initiated Complaints by Ground, 1983/84

Race/Colour - 3	Sex - 3	Creed - 1	Handicap - 5
Total - 12			

TABLE 4A

Under section 31(2) of the Code, the Commission may initiate complaints at the request of persons, or on its own initiative, where violations of the Code are apparent. Examples of complaints initiated are: several on behalf of minors; one alleging that mentally handicapped persons were being recruited by questionable methods to be employed as farm workers; and one alleging discriminatory recruitment practices by an employment agency operating in Ontario on behalf of an Arab country.

B. COMPLIANCE CASES CLOSED

TABLES 5 and 6 Complaints Disposed of by Ground, 1983/84 (1982/83)

One thousand and twelve cases were disposed of in 1983/84, representing an increase of 33% over 1982/83. This was due, in part, to the fact that additional staff has been made available to the Commission, and had become fully trained during this period.

During the year, 68% of all closed cases was settled, 18% dismissed and 14% withdrawn. Comparative figures for 1982/83 were: 60% settled, 29% dismissed and 11% withdrawn. The highest settlement rate occurred in age at 78% and creed at 76%, while record of offences and reprisal registered the lowest at 50% each. A case is settled where, following investigation and discussion of the facts, the parties agree on the proposals advanced and sign an agreement outlining the terms of the settlement, or where the complainant indicates in writing that he/she is satisfied that discrimination did not occur in his or her case.

Under section 33, the Commission may decide not to deal with a case in any of four specific circumstances delineated in the Code. Also, respondents may invoke any of those four as defences and the Commission will approve or reject their arguments. Where the case is not dealt with, the complainant is advised in writing of the decision and reasons thereof and he/she may request a reconsideration of the Commission's decision. This fiscal year, of the 41 cases considered under section 33, 26 were not dealt with and 15 proceeded to investigation.

Under section 36, where a complaint is not settled and the Commission decides not to appoint a board of inquiry under section 35 or where a complaint is not dealt with under section 33, the complainant may request the Commission to reconsider its decision. In this case, the case-file is scrutinized and the evidence re-assessed by a senior staff member who wasn't involved in the previous investigation, and recommendations are made to the Commission on the merits of the complainant's position. Where warranted, reinvestigation and reconciliation of the matter takes place and the original decision may be reversed. This fiscal year, there were 66 reconsideration requests of which 56 were completed. As a result, two dismissals were reversed.

TABLE 5 - Complaints Disposed of by Ground, 1983/84

Disposition:	Ground:		Race/Colour		Ethnic Origin		Sex		Age		Marital Status		Family Status		Handicap		Public Assistance		Record of Offences		Reprisals		Total			
	Settled	Dismissed	71	20	5	25	10	12	7	4	16	4	16	4	17	13	125	12	3	5	690	68%				
Settled	164 61%	30 51%	26 76%	136 74%	70 71%	89 78%	17 65%	17 68%	13 71%	12 75%	125 50%	12 50%	12 50%	12 50%	12 50%	12 50%	12 50%	12 50%	12 50%	12 50%	12 50%	12 50%	12 50%	690 68%	690 68%	
Dismissed	71 26%	20 34%	5 15%	25 13%	10 10%	12 11%	7 27%	7 21%	4 9%	4 25%	4 17%	1 20%	1 20%	1 20%	1 20%	1 20%	1 20%	1 20%	1 20%	1 20%	1 20%	1 20%	1 20%	1 20%	177 18%	177 18%
Withdrawn	33 13%	9 15%	3 9%	24 13%	19 13%	12 11%	2 8%	2 11%	2 11%	36 20%	36 20%	- -	2 33%	2 30%	2 30%	2 30%	2 30%	2 30%	2 30%	2 30%	2 30%	2 30%	2 30%	2 30%	145 14%	145 14%
Total	268	59	34	185	99	113	26	19	177	16	6	10	10	10	10	10	10	10	10	10	10	10	10	1,012		

TABLE 6 - Complaints Disposed of by Ground, 1982/83

Disposition:	Race/Colour	Ethnic Origin	Sex	Age	Marital Status	Family Status	Handicap	Receipt of Public Assistance	Record of Offences	Total						
Settled	150 63%	44 54%	11 85%	92 53%	62 74%	53 59%	58%	60%	31 64%	-	-	-	-	-	460	60%
Dismissed	75 31%	29 35%	-	67 38%	13 15%	22 24%	21%	5	-	9 19%	-	-	-	-	220	29%
Withdrawn	14 6%	9 11%	2 15%	16 9%	9 11%	15 17%	21%	5	2 40%	8 17%	1 1	1 1	1 1	1 11%	82	82%
Total	239	82	13	175	84	90	24	5	48	1	1	1	1	1	762	

TABLE 7 - Employment Complaints Disposed of by Type and Ground, 1983/84

Six hundred and forty, or 63%, of the cases closed were employment-related. This Table details the types of employment situations giving rise to complaints.

Complaints involving terminations were the highest at 370, or 58%, followed by recruitment and hiring at 172, or 20%. Those dealing with problems experienced during employment, such as in promotions, transfers, training, classifications and general terms and conditions, numbered 98, or 15%. The average settlement rates for termination cases was 68%, for hiring/recruitment, 62%, and for problems encountered during employment, 74%.

The average settlement rate for all grounds was 68%, with age having the highest rate at 79%, and ethnic origin the lowest at 47%.

TABLE 7 - Employment Complaints Disposed of by Type and Ground, 1983/84

* Marital status; family status; public assistance; record of offences and reprisals

TABLE 8 - Closed Employment and Sexual Harassment Complaints by Type of Work and Grounds, 1983/84

Type of Work:	Grounds:									TOTALS
	Race/Colour	Ethnic Origin	Creed	Sex	Sexual Harassment	Age	Handicap	Others *		
Professional/ Managerial/ Technical	28	7	10	21	8	21	21	9	125	
Sales	5	3	2	14	9	12	10	6	61	
Clerical	15	5	2	19	20	15	16	7	99	
Crafts and Foremen/ Women	20	9	4	4	4	12	12	3	68	
Operators (machine, lathe, press, etc.)	27	7	1	8	6	3	14	2	68	
Services	42	4	2	36	34	13	23	7	161	
Labour/General	40	5	4	24	7	14	43	9	146	
Totals	177	40	25	126	88	90	139	43	728	

* Marital status, family status, record of offences and reprisal

TABLE 8

"Type of Work" denotes the occupational categories of complainants. Complaints in the "services" category registered the highest while "sales" was the lowest.

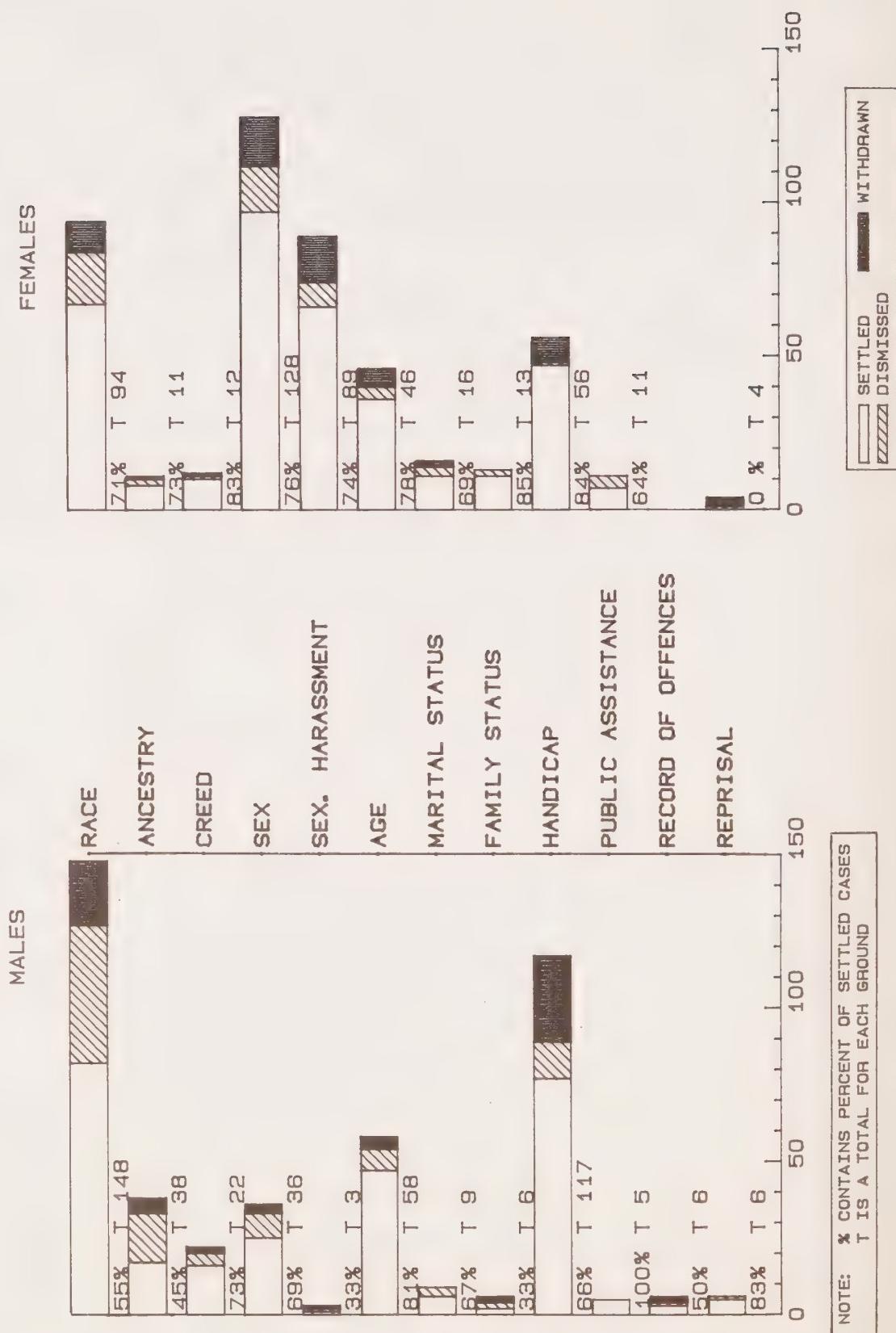
TABLE 9 - Complaints Disposed of by Sex of Complainant and Ground 1983/84

Males						Females					
Withdrawn Nos.	%	Dismissed Nos.	%	Settled Nos.	Total Nos.	Withdrawn Nos.	%	Settled Nos.	Total Nos.	Dismissed Nos.	%
21	14	45	30	82	148	Race	94	67	71	17	18
5	13	16	42	17	45	Ethnic Origin	11	8	73	2	18
2	9	4	18	16	73	Creed	12	10	84	1	8
3	8	8	22	25	70	Sex	128	97	76	15	12
1	33	1	33	1	34	Sexual Harassment	89	66	74	8	9
4	7	7	12	47	81	Age	46	36	78	4	9
-	-	3	33	6	67	Marital Status	16	11	69	3	19
2	33	2	33	2	34	Family Status	13	11	85	2	15
28	24	12	10	77	66	Handicap	56	47	84	1	2
-	-	-	-	5	100	Public Assistance	11	7	64	4	36
2	33	1	17	3	50	Record of Offences	-	-	-	-	-
-	-	1	17	5	83	Reprisal	4	-	-	1	25
68	-	100	-	286	-	Totals	480	360	-	58	-
15%	-	22%	-	63%	-		100%	75%	-	12%	-
					100%					62	-
										13%	-

TABLE/FIGURE 9

Complaints filed by females registered an average settlement rate of 75% against 63% by males. This difference occurred in all grounds but age, receipt of public assistance and reprisal.

TABLE/FIGURE 9. CASES CLOSED BY SEX OF COMPLAINANT AND GROUND: 1983-84



TABLES 10 and 11 - Settlements Obtained by Ground, 1983/84 (1982/83)

Monetary compensation in 1983/84 reached a total of \$865,189 for 326 complainants, or 32% of all complainants, as compared to a total of \$534,058 for 26% of all complainants last year. Twenty-nine per cent of all complainants received offers of jobs and facilities, against 25% last year.

Similarly to last year, age was the ground registering the highest monetary compensation reflecting the continuing pressures on workers in the 60 to 65 age group to retire early.

TABLE 10 - Settlements Obtained by Ground, 1983/84

Settlement:	Ground:	Number of Complaintants Who Received Damages	Specific and General Damages	Offer of Job or Facility for Next Job or Consideration	Affirmative Action Implemented	Seminars With Respondent Staff	Policies or Documents Reviewed of Practices,	Issue or Correction of References	Letter of Apology to Complainant	Written Declaration of Management Policies
Race/Colour	\$ 98,204	33	25	8	22	56	16	33	71	71
Ethnic Origin	7,085	(65)	3	7	1	2	8	3	3	8
Creed	39,570	(10)	6	4	-	3	5	3	6	6
Sex	174,811	(75)	31	21	10	17	33	16	22	60
Sexual Harassment	71,271	(55)	8	7	-	10	18	26	28	47
Age	370,973	(50)	18	15	-	9	31	8	13	27
Marital Status	2,606	(4)	4	4	-	2	11	3	7	9
Family Status	2,176	(6)	5	3	-	1	3	1	5	10
Handicap	88,942	(48)	45	50	-	9	55	27	33	50
Receipt of Public Assistance	550	(2)	3	4	-	1	4	1	2	9
Record of Offences	1,400	(2)	1	-	-	-	-	1	-	2
Reprisal	7,601	(2)	1	-	-	-	-	2	-	4
Total	\$865,189	(326)	158	140	19	76	224	107	152	303

TABLE 11 - Settlements Obtained by Ground, 1982/83

Settlement:	Ground:	Number of Complainants Who Received Damages	General Damages	Specific and General Damages	Offer of Job or Facility	Offer of or Consideration for Next Job or Facility	Affirmative Action Implemented	Seminars With Respondent Staff	Review of Practise, Policies or Documents	Issueance or Correction of References	Letter of Apology to Complainant	Written Declaration of Management Policies
Race/Colour	\$ 58,710	(42) *	26	23	7	24	31	17	13	145	-	-
Ethnic Origin	38,872	(14)	5	2	1	9	5	3	3	36	-	-
Creed	4,561	(3)	3	1	1	1	5	1	-	9	-	-
Sex	59,183	(54)	20	40	15	33	28	9	15	145	-	-
Sexual Harassment	76,261	(43)	2	6	-	8	5	1	3	13	-	-
Age	287,913	(32)	13	10	1	10	7	3	7	45	-	-
Marital Status	1,388	(3)	1	2	2	2	3	-	1	12	-	-
Family Status	-	(-)	2	3	-	-	2	-	1	3	-	-
Handicap	7,170	(7)	16	15	1	8	20	5	8	23	-	-
Receipt of Public Assistance	-	(-)	-	-	-	-	-	-	-	-	-	-
Record of Offences	-	(-)	-	-	-	-	-	-	-	-	-	-
Reprisal	-	(-)	-	-	-	-	-	-	-	-	-	-
Total	\$534,058	(198)	88	102	28	95	106	39	51	431	-	-

TABLE 12 - Boards of Inquiry Appointed and Completed, 1983/84

	1983/84	1982/83
Boards Appointed	33	(60)*
Boards Completed:	28	(44)
Decisions for Complainant	7	(15)
Pre-hearing Settlements	13	(18)
Decisions for Respondent	7	(10)
Complaints Withdrawn	1	(1)
Boards Incomplete (from all years)	32	(61)
Board Decisions Under Appeal	6	(14)

* Number of complainants involved

** Includes pre-hearing settlements

TABLE 12

Eleven, or 50% more, boards were appointed in 1983/84. Seven more were completed. Thirteen boards were settled prior to the hearing. One board case was withdrawn by the complainant as a result of an interim board decision ordering the respondent to make available to the Commission documents theretofore withheld as confidential.

TABLE 13 - Intake, Voluntary Compliance And Public Education, 1983/84 (1982/83)

	1983/84	1982/83
	OHRC Total	OHRC Total
Inquiries	41,491	35,351
Referrals	10,272	4,812
Informal Resolutions	346	567
Application Form Reviews	745	1,199
Advertising Reviews	255	451
Exemptions	68	57
Public Education Activities*	1,240	884
Publications Distributed	342,723	543,680

* These totals are shown in Table 18

TABLE 13

The number of inquiries, referrals and public education activities continued to increase during this fiscal year, reflecting the broader coverage of the new Code and the consequent public demand for information and consultations with the Commission.

There was a decrease in the number of informal resolutions, application form reviews and publications distributed. This was due to the fact that the public, employers and organizations became more familiar with the new provisions of the Code and the demand for revision of advertisements and application forms was not as great as in the period immediately following the Code's proclamation.

TABLE 14 - Closed Race Relations Cases by Sector, 1983/84 (1982/83)

Sector	1983/84			1982/83		
	Media-tions	Projects	Consulta-tions	Media-tions	Projects	Consulta-tions
Neighbourhood Relations	36	5	15	39	4	8
Public Services/Facilities	13	1	10	15	1	2
Criminal Justice System	38	9	33	27	13	13
Educational Institutions	16	7	71	11	8	52
The Workplace	8	2	15	7	4	17
Unions	1	-	10	1	1	10
Media	16	1	10	10	4	14
Health/Social Services	2	5	15	1	4	10
Community Organizations	17	16	229	5	15	179
Religious Institutions	1	-	10	3	2	11
Government	8	13	47	12	15	50
Community at Large	1	7	24	1	-	18
Total	157	66	489	132	71	384

Mediations

Involve the response of the Division to specific racial, ethnic or religious tensions and conflicts that develop at the community and institutional levels and the deployment of resources to address them.

Projects

Involve race relations program development and delivery initiatives designed to improve race relations by addressing discriminatory practices at both the community and institutional levels.

Consultations

Include information giving and advice on race relations issues to individuals and groups as requested.

In addition to cases as described in Table 14, there were 33 public education projects, 234 public education activities and seven research projects closed this fiscal year.

ONTARIO HUMAN RIGHTS COMMISSION STAFF*

at March 31, 1984

Office of the Chairman

Jones, Howard
Shaw, Marian
Silberman, Toni
Wood, Glenda

Office of the Race Relations Commissioner

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Ifejika, Sam
Ramondt, Susan
Tan, Khim

Office of the Executive Director

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Gaspar, Fern
McGregor, Sharon
Mears, Laurie
Reynolds, Jessica
Shakeel, Sabir
Watson, Karen

Conciliation and Compliance Division

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Stratton, Jim
Svegzda, Laima

Unit for the Handicapped

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Gulamhussein, Zarina
Justason, Barbara
Lawrence, Greg
Ramanujam, Sita
Ruiter, Fred
Singh, Vidya

Race Relations Division

Bullen, Sharon
Chiappa, Anna
DaSilva, Mike
D'Ignazio, Danny
Gill, Surinder
Guttentag, Gail
Nakamura, Mark
Rouse, Philip
St. Onge, Joanne
Schweitzer-Rozenberg, Ruth
Siu, Bobby
Whist, Eric
Witter, Merv
Zaidi, Urooj

Eastern Ontario Region

Ackroyd, Lynda
Legault, Thérèse
Polley, Joe
Richard, Maurice

Northern Ontario Region

Galinis, Ruth
Jackson, Bill
Lapalme, Gilles
Mitchell, Irene
Welch, Dan

Southwestern Ontario Region

Barnes, Dorothy
Burns, Walter
Carrick, Anne
Dahlin, Anita
Marino, Len
McSween, Selwyn
Wilson, Kim

Toronto Central Region

Cargill-Sim, Fiona
Chapman, Shirley
Crean, Fiona
Holt, Silvlyn
Johnson, Beverley
Mullings, Paulette
Nebout, Maggie
Obermuller, Diane
Speranzini, Gary
Stern, Doris

Toronto East Region

Caffrey, Colm
Della Vella, Rick
Dewe, David
Edwards, Neil
Fiddes, Judy
Kerna, Gloria
Mankikar, Ann
Morrison, Glen
Palacio, Roger
Robson, Beverley
Simon, Michael

Toronto West Region

Arnot, Perry
Chopra, Raj
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CODE DES DROITS DE LA PERSONNE

PRÉAMBULE

CONSIDÉRANT que la reconnaissance de la dignité inhérente à tous les membres de la famille humaine et de leurs droits égaux et inaliénables constitue le fondement de la liberté, de la justice et de la paix dans le monde et est conforme à la Déclaration universelle des droits de l'homme proclamée par les Nations unies;

CONSIDÉRANT que l'Ontario a pour principe de reconnaître la dignité et la valeur de la personne et d'assurer à tous les mêmes droits et avantages, sans discrimination contraire à la loi, et qu'elle vise à créer un climat de compréhension et de respect mutuel de la dignité et de la valeur de la personne de façon que chacun s'estime partie intégrante de la collectivité et apte à contribuer pleinement à l'avancement et au bien-être de son milieu et de sa province;

ET CONSIDÉRANT que ces principes sont confirmés en Ontario par un certain nombre de lois et qu'il est opportun de réviser et d'accroître la protection des droits de la personne en Ontario;

Pour ces motifs, Sa Majesté, de l'avis et du consentement de l'Assemblée législative de la province de l'Ontario, décrète ce qui suit:

1 La personne a droit à un traitement égal en matière de services, de biens ou d'installations, sans discrimination fondée sur la race, l'ascendance, le lieu d'origine, la couleur, l'origine ethnique, la citoyenneté, la croyance, le sexe, l'âge, l'état matrimonial, l'état familial ou une infirmité. 1981, chap. 53, art. 1.

2 (1) La personne a droit à un traitement égal en matière d'occupation d'un logement, sans discrimination fondée sur la race, l'ascendance, le lieu d'origine, la couleur, l'origine ethnique, la citoyenneté, la croyance, le sexe, l'âge, l'état matrimonial, l'état familial, l'état d'assisté social ou une infirmité.

(2) L'occupant d'un logement a le droit de vivre sans être harcelé par le propriétaire ou son représentant ou un occupant du même immeuble pour des raisons fondées sur la race, l'ascendance, le lieu d'origine, la couleur, l'origine ethnique, la citoyenneté, la croyance, l'âge, l'état matrimonial, l'état familial, l'état d'assisté social ou une infirmité. 1981, chap. 53, art. 2.

3 La personne pourvue de capacité juridique a le droit de passer un contrat à titre de partenaire égal, sans discrimination fondée sur la race, l'ascendance, le lieu d'origine, la couleur, l'origine ethnique, la citoyenneté, la croyance, le sexe, l'âge, l'état matrimonial, l'état familial ou une infirmité. 1981, chap. 53, art. 3.

4 (1) La personne a droit à un traitement égal en matière d'un emploi, sans discrimination fondée sur la race, l'ascendance, le lieu d'origine, la couleur, l'origine ethnique, la citoyenneté, la croyance, le sexe, l'âge, l'existence d'un casier judiciaire, l'état matrimonial, l'état familial ou une infirmité.

(2) L'employé a le droit de travailler sans être harcelé au travail par son employeur ou son représentant ou un autre employé pour des raisons fondées sur la race, l'ascendance, le lieu d'origine, la couleur, l'origine ethnique, la citoyenneté, la croyance, l'âge, l'existence d'un casier judiciaire, l'état matrimonial, l'état familial ou une infirmité. 1981, chap. 53, art. 4.

5 La personne a droit à un traitement égal en matière d'adhésion à un syndicat ou à une association commerciale ou professionnelle ou en matière d'exercice d'une profession autonome, sans discrimination fondée sur la race, l'ascendance, le lieu d'origine, la couleur, l'origine ethnique, la citoyenneté, la croyance, le sexe, l'âge, l'état matrimonial, l'état familial ou une infirmité. 1981, chap. 53, art. 5.

6 (1) L'occupant d'un logement a le droit de vivre sans être harcelé par le propriétaire ou son représentant ou un occupant du même immeuble pour des raisons fondées sur le sexe.

(2) L'employé a le droit de travailler sans être harcelé à son travail par son employeur ou son représentant ou un autre employé pour des raisons fondées sur le sexe.

(3) La personne a le droit d'être à l'abri:

a) d'avances sexuelles provenant d'une personne apte à lui accorder ou à lui refuser un avantage ou une promotion lorsque la personne qui fait les avances sait ou devrait normalement savoir que celles-ci sont importunes;

b) de représailles ou de menaces de représailles pour avoir refusé d'accéder à des avances sexuelles lorsque ces représailles ou menaces proviennent d'une personne apte à lui accorder ou à lui refuser un avantage ou une promotion. 1981, chap. 53, art. 6.

7 La personne a le droit de revendiquer et de faire respecter les droits qui lui sont reconnus par la présente loi, d'introduire des instances aux termes de la présente loi et d'y participer, et de refuser d'enfreindre un droit reconnu à une autre personne par la présente loi sans représailles ou menaces de représailles. 1981, chap. 53, art. 7.

8 Il est interdit d'enfreindre un droit reconnu par la présente partie ou de causer, directement ou indirectement, l'infraction d'un tel droit. 1981, chap. 53, art. 8.

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HUMAN RIGHTS CODE

PREAMBLE

WHEREAS recognition of the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world and is in accord with the Universal Declaration of Human Rights as proclaimed by the United Nations;

AND WHEREAS it is public policy in Ontario to recognize the dignity and worth of every person and to provide for equal rights and opportunities without discrimination that is contrary to law, and having as its aim the creation of a climate of understanding and mutual respect for the dignity and worth of each person so that each person feels a part of the community and able to contribute fully to the development and well-being of the community and the Province;

AND WHEREAS these principles have been confirmed in Ontario by a number of enactments of the Legislature and it is desirable to revise and extend the protection of human rights in Ontario;

PREMIER

MINISTER OF LABOUR

CHAIRMAN, ONTARIO HUMAN RIGHTS COMMISSION

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Every person has a right to equal treatment with respect to services, goods and facilities, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, age, marital status, family status or handicap.

2.—(1) Every person has a right to equal treatment with respect to the occupancy of accommodation, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, age, marital status, family status, handicap or the receipt of public assistance.

(2) Every person who occupies accommodation has a right to freedom from harassment by the landlord or agent of the landlord or by an occupant of the same building because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, age, marital status, family status, handicap or the receipt of public assistance.

3. Every person having legal capacity has a right to contract on equal terms without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, age, marital status, family status or handicap.

4.—(1) Every person has a right to equal treatment with respect to employment without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, age, record of offences, marital status, family status or handicap.

(2) Every person who is an employee has a right to freedom from harassment in the workplace by the employer or agent of the employer or by another employer because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, age, record of offences, marital status, family status or handicap.

5. Every person has a right to equal treatment with respect to membership in any trade union, trade or occupational association or self-governing profession without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, age, marital status, family status or handicap.

6.—(1) Every person who occupies accommodation has a right to freedom from harassment because of sex by the landlord or agent of the landlord or by an occupant of the same building.

(2) Every person who is an employee has a right to freedom from harassment in the workplace because of sex by his or her employer or agent of the employer or by another employee.

(3) Every person has a right to be free from,

(a) a sexual solicitation or advance made by a person in a position to confer, grant or deny a benefit or advancement to the person where the person making the solicitation or advance knows or ought reasonably to know that it is unwelcome; or

(b) a reprisal or a threat of reprisal for the rejection of a sexual solicitation or advance where the reprisal is made or threatened by a person in a position to confer, grant or deny a benefit or advancement to the person.

7. Every person has a right to claim and enforce his or her rights under this Act, to institute and participate in proceedings under this Act and to refuse to infringe a right of another person under this Act, without reprisal or threat of reprisal for so doing.

8. No person shall infringe or do, directly or indirectly, anything that infringes a right under this Part.

ONTARIO HUMAN RIGHTS COMMISSION

ANNUAL REPORT

1984 - 1985

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Ontario
Human Rights
Commission

Commission
ontarienne des
droits de la personne

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June 1985

The Honourable R. G. Elgie, M.D.
Minister of Labour
400 University Avenue
14th Floor
Toronto, Ontario
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Dear Dr. Elgie:

Pursuant to Section 30(1) of the Human Rights Code, 1981, it is my pleasure to provide to you the Annual Report of the Ontario Human Rights Commission for the fiscal year 1984/85 for submission to the Legislative Assembly of Ontario.

Yours sincerely,

A handwritten signature in cursive ink that reads "Borden Purcell".

Canon Borden Purcell
Chairman

MINISTER'S MESSAGE



As Minister responsible for Human Rights, I am delighted to have this opportunity to thank Commissioners and staff of the Ontario Human Rights Commission for a particularly active year which saw several new thrusts in programs and legislation.

One of the Commission's major initiatives in 1984-85 was a conference with more than 100 Chief Executive Officers from Ontario to discuss a specific human rights issue - the merit principle in hiring practices. This meeting generated stimulating discussion which I believe will have a significant, positive impact on the further development of equitable hiring and promotion practices in this province.

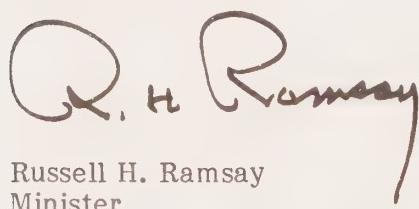
In June, 1984, a new provision came into effect in the Ontario Human Rights Code. All provincial statutes and regulations became subject to the Code unless they contain specific exemption from it. This created a considerable increase in the Commission's caseload, which its able and dedicated staff is working hard to meet.

To deal with the large volume of cases in southwestern Ontario, a new regional jurisdiction was established in Hamilton to serve the Hamilton-Niagara peninsula.

The Commission's expanding activities will continue to be guided by Canon Borden C. Purcell who has agreed to serve a second three-year term as Chairman.

I have every confidence that the people of Ontario will continue to benefit from the Ontario Human Rights Commission's efforts to enhance equality and social justice in the province.

Yours sincerely,


Russell H. Ramsay
Minister

A handwritten signature in black ink, appearing to read "R. H. Ramsay". Below the signature, the name "Russell H. Ramsay" is printed in a standard font, followed by "Minister" on the next line.

CHAIRMAN'S REMARKS

I am greatly honoured to have been reappointed as Chairman for another three-year term, and share the pleasure of my fellow Commissioners in looking forward to a new and exciting era in human rights.

The Commission has undertaken a number of special initiatives this year, and their success bodes well for new developments throughout the coming year. They will be outlined in more detail in the section entitled "Commission Activities", but I would like to briefly highlight them here.

As part of our continuing effort to engage in dialogue with members of each community in the province, the Commission launched the first in a series of community consultations in London, Ontario, on November 7, 1984. Close to 100 community representatives from London, Sarnia, Chatham, Guelph, Kitchener, Waterloo, Brantford and Hamilton gathered to share and discuss common goals and issues of concern to southwestern Ontario.

On February 7, 1985, the Commission sponsored its first formal conference for 125 senior executives of business and industry. Entitled "The Merit Principle in Action", the seminar was designed to dispel a number of myths about the impact of human rights legislation on business, and provide an opportunity for the participants to exchange, with one another and with the Commission, various programs, policies and philosophies to assist them in complying with the Code.

I was honoured, last fall, to be invited to attend a seminar/workshop in Eisenach, East Germany, on Human Rights and National Sovereignty, as one of four Canadian delegates. The seminar focused on Principles VI and VII of the Helsinki Final Act, to which Canada is a signatory, and contributed to the agenda for the Conference on Security and Co-operation in Europe, which took place in Ottawa in May.

It is with regret that the Commission acknowledges the end of the terms of office of Rabbi Gunther Plaut, Vice-Chairman and Dr. Albin Jousse. Their expertise and wise counsel have been invaluable to us, and we wish them well in their future endeavours. Commissioner Sam Ion resigned from the Commission in October, 1984 to assume her new duties as President of the Ontario Advisory Council on Women's Issues, and I trust its needs will be well served by her.

On behalf of my colleagues, I would like to extend a warm welcome to our four new Commissioners, Lou Ronson, Catherine Frazee, John Bennett and Leslie Blake-Coté, whose work experience, expertise and sensitivity to human rights issues will ensure that the work of the Commission will continue to be of the highest calibre.

Again, I express my personal gratitude to our Minister of Labour, the Honourable Russell H. Ramsay, for his wisdom, unfailing co-operation and support of our endeavours. As for our staff, I continue to hold them in the highest regard, and offer them my full confidence and encouragement.

The coming year will bear witness to many changes and challenges, which we must all be prepared to meet. I once again place my trust in the goodwill of the people of Ontario to assist the Commission in fulfilling our mutual goals of equality of opportunity, quality of life, dignity and respect.

THE COMMISSION



Back row, left to right:

Aileen Anderson, Louis Alexopoulos, Bev Salmon (Race Relations Commissioner),
Dr. Albin Jousse, Mary Lou Dingle

Front row, left to right:

Rabbi Gunther Plaut (Vice-Chairman), Canon Borden Purcell (Chairman), Marie
Marchand

Absent: Dr. Bausaheb Ubale (Race Relations Commissioner), Sam Ion

The following Commissioners were appointed for three-year terms effective February 19, 1985:



Commissioner: John Bennett

John Bennett resides in Sault Ste. Marie and has been employed by The Algoma Steel Corporation Ltd. since 1950. Actively involved in union activities, Mr. Bennett also serves on the Boards of the United Way, Sault Ste. Marie Library, Sault College of Applied Arts and Technology and the Canadian Mental Health Association.



Commissioner: Catherine L. Frazee

Catherine Frazee, currently the Product Standards Coordinator for Esso Petroleum Canada, holds Board membership in the Canadian Paraplegic Association, and has actively served as a volunteer with a variety of community organizations such as the Canadian Special Olympics for the Mentally Disabled, the International Year of Disabled Persons and Daybreak Community for Mentally Disabled Adults.



Commissioner: R. Lou Ronson

R. Lou Ronson is Chairman of the Board of Workwear Corporation of Canada, and holds directorships in over twenty business and community organizations. The recipient of numerous humanitarian awards, including the National Human Relations Award - Canadian Council of Christians and Jews, Mr. Ronson was also Chairman of an International Trade Mission sponsored by the Ontario Ministry of Industry and Tourism and the Canada-Israel Chamber of Commerce.



Commissioner: Leslie Blake-Coté

Leslie Blake-Coté utilizes her varied background in teaching, print and broadcast journalism and public relations as a feature writer for local and national trade magazines and newspapers, and researcher/host of numerous cable television documentaries. Ms. Blake-Coté is also actively involved in community and volunteer endeavours.



Top: Rabbi Gunther Plant, Canon Borden Purcell
Centre: Commission meeting
Bottom: Dr. Albin Jousse and Louis Alexopoulos



Business Conference: "Merit Principle in Action"

Top, left to right: The Honourable Russell H. Ramsay, Minister of Labour,
The Honourable Robert Welch, Minister Responsible for Women's Issues,
Canon Borden Purcell

Bottom, left to right: Grete Hale, President, Morrison Lamontagne, Inc.,
Marie Marchand, The Honourable Phil Gillies, Minister Without Portfolio for
Youth

COMMISSION ACTIVITIES

1984 / 85

The aim of the Ontario Human Rights Commission is to create a climate of understanding and mutual respect wherein the dignity and worth of every person is recognized, and where equality of rights and opportunities is provided without discrimination.

Public Education and Consultation

In an effort to accomplish this goal, the Commission places a strong emphasis on public education. From its daily experience, the Commission has become increasingly aware of the ongoing need to educate groups and individuals about their rights and responsibilities under the Code and the principles underlying its provisions.

During fiscal year 1984/85, the Chairman, Canon Borden Purcell, and Commissioners participated in consultations and educational events throughout Ontario concerning human rights and the Commission's programs of conciliation, compliance and race relations. The Chairman gave more than 25 formal speeches, participated in over 20 major conferences and attended more than 375 public education and community functions and consultations. The audiences of these speaking engagements and public educational activities included employers, unions, women's groups, religious institutions, cultural organizations, associations assisting persons with a handicap, police, service clubs and students. In addition, the Chairman and Commissioners were interviewed many times by the print, broadcast and cable media throughout Ontario, including the French language and ethnic press. As well, the Commission's staff continued its extensive educational programs of seminars, films, conferences, distribution of materials and consultations.

During the monthly meetings of the Commission and the Race Relations Division, a number of individuals and organizational representatives were invited to exchange information which, in turn, enabled the Commission to be kept abreast of particular human rights concerns. These discussions assisted the Commission in its development of policies and programs. Through this format, mutual goals are recognized, as well as the need for co-operation in achieving them.

Close contact with school boards, organizations, community groups and individuals committed to the advancement of human rights principles enabled the Commission to hold, co-sponsor and participate in many seminars and conferences throughout the province during the fiscal year, in an attempt to further increase awareness of and sensitivity towards human rights in our society. These events are discussed in further sections of this report.

Last year, the Chairman and Commissioner Marie Marchand travelled throughout Northern Ontario as part of the Commission's public education initiative. This past year, the Chairman travelled extensively throughout eastern and southwestern Ontario, addressing groups and meeting with many community organizations and leaders.

Each of the Commissioners participated in public education and human rights awareness programs in their local communities. For example, Mary Lou Dingle, a Hamilton lawyer, participated in a number of human rights forums, including the Filipino Independence Day Gala, seminars at the McMaster School of Social Work,

Sherwood Heights Secondary School, the Women's Networking Group, the Association of Administrative Assistants, the Ancaster Rotary Club and the Women's Guild at Christ Church, Bullock's Corners.

Business Conference

On February 7, 1985 the Commission hosted a one-day conference entitled "The Merit Principle in Action". It was attended by 145 Chief Executive Officers, Vice-Presidents and other representatives of major Ontario-based corporations.

In preparation for the conference, the Chairman met with a number of business leaders on an individual basis. The Chairman also addressed the Round Table Club of Toronto, comprised of executives of many of the large corporations in Ontario.

The purpose of the conference was to provide a forum for the Commission and the private sector to engage in dialogue on the topic of equal opportunity in employment and the benefits to business of taking a proactive approach to human rights.

The conference opened with welcoming remarks from the Minister of Labour, the Honourable Russell H. Ramsay. The morning session included a panel of business leaders, the Deputy Minister of Labour, the Commission's legal counsel, and the Chairman speaking on the topics of "Dispelling the Myths" and "What the Chief Executive Officer Needs to Know from the Ontario Human Rights Commission".

Business leaders on the panel provided a sampling of corporate success stories in which special programs, aimed at more frequent and better utilization of women, people with a handicap, Native people and racial minorities, have benefited their companies in terms of productivity, morale and profits. At lunch, the Honourable Robert Welch spoke forcefully and eloquently about equal opportunity for women.

The afternoon's session was entitled "What the Ontario Human Rights Commission Needs to Know from Business". This provided an opportunity for the Commission to hear the concerns of business about implementing the Code and equal opportunity. The Vice-Chairman of the Commission closed the conference by emphasizing that the best interests of all of us are served by recognizing the multi racial, multi ethnic and multi religious nature of the workplace, utilizing the merit principle and working together to prevent complaints of discrimination.

Affirmation

Rabbi W. Gunther Plaut, former Vice-Chairman of the Commission, is the editor of "Affirmation", the Commission's quarterly. It contains feature stories, personal profiles, examples of significant cases and settlements, findings of boards of inquiry, editorials and articles on important human rights topics. Articles are written by staff, Commissioners and interested members of the public. "Affirmation" has a circulation of 10,000, including employers, schools, labour, community organizations and members of the general public.

The June 1984 edition featured an article on discrimination on the basis of pregnancy and an editorial on age discrimination. September's issue included the adapted text of a speech given by the editor to the Urban Alliance on Race Relations and an explanation of special employment programs aimed at achieving employment equity.

"Affirmation's" December 1984 issue featured an article on the first board of inquiry decision under the new Human Rights Code respecting a complaint taken under the new ground of handicap. In the same issue, Rabbi Plaut wrote an editorial on December 10, the anniversary of the Universal Declaration of Human Rights. The Chairman's corner provided an in-depth look at discrimination against people with a handicap.

March 1985's "Affirmation" had an article on the implications of the equality rights section of the Canadian Charter of Rights and Freedoms. There was also an article on the board of inquiry and appeal to the Divisional Court of the Supreme Court of Ontario regarding the complaints of sexual harassment of six female employees of Commodore Business Machines Ltd. In addition, three of the four "Affirmations" included articles in French.

Bicentennial Celebrations

Ontario celebrated its Bicentennial throughout 1984. To mark the occasion, the Commission sponsored a play produced by Theatre Direct Canada called "New Canadian Kid", an innovative, sensitive and emotionally involving play about the difficulties of being the new and different kid-on-the-block. "New Canadian Kid" was highly praised by the over 5,000 elementary school children and teachers who saw it.

The Chairman authored an article on the history of human rights in Ontario for inclusion in a commemorative Bicentennial book produced by the Ministry of Citizenship and Culture.

As well, 5,000 copies of the Commission's Human Rights Scroll were distributed to agencies and institutions throughout the province.

Commission and Community Meeting, London, Ontario

As part of our mandate of responding to human rights issues and concerns throughout the province, and in an effort to open dialogue with the community, the Commission held a Consultation with community leaders, employers and the general public at the London Regional Art Gallery on the evening of November 7, 1984.

Over 100 people from London, Sarnia, Brantford, Chatham, Kitchener, Waterloo, Guelph and Hamilton, representing ethnic, women's, handicap and Native groups as well as educational and employment leaders, attended. The Commissioners opened the Consultation by discussing the Code and the Commission's mandate and goals. The question-and-answer and general discussion period allowed for information sharing and discussion of issues of mutual concern. Senior staff and the Southwestern Region staff of the Commission participated in the discussions.

International Responsibilities

Canada and its provinces and territories have been involved in the international human rights arena for many years. In signing the United Nations Declaration of Human Rights in 1948, all member nations assumed an obligation to promote human rights at home and abroad. Canada's interest was heightened during the Helsinki Conference of 1975 and the adoption of its Final Act, which was the reiteration by all participants of their international human rights commitments.

The Commission forms part of and holds membership in a network of human rights agencies on both the national and international levels. During the fiscal year, Commission representatives participated in conferences held by the International Association of Official Human Rights Agencies, the Canadian Association of Statutory Human Rights Agencies and the Federal-Provincial-Territorial Committee of Officials Responsible for Human Rights. A number of representatives from human rights commissions in the United States, Australia and the United Kingdom sought information and assistance by exploring and examining the role and function of the Ontario Commission.

A Federal-Provincial Ministerial Conference on Human Rights, held in 1975, created a new national organization called the Continuing Federal-Provincial-Territorial Committee of Officials Responsible for Human Rights. This committee, which meets at least twice a year, was established to provide and maintain the necessary liaison and consultation for Canada to meet its obligations under the International Covenants. Ontario has been an active participant on the Continuing Committee since its inception.

The Continuing Committee has co-ordinated several conferences of ministers responsible for human rights, modelled after the initial one held in 1975, during which ministers from all jurisdictions in Canada review and discuss current issues and initiatives in the area of human rights. This forum enables the members to gain a common understanding of problems and concerns in the different regions of Canada and to keep abreast of Canada's role in addressing human rights issues in the international arena. In addition, the ministers propose ways in which human rights programs in Canada can be strengthened to ensure that they conform to the principles enunciated in the International Covenants.

The Chairman participated in a number of activities relating to the protection of human rights throughout the world. In November, he met with religious leaders from many countries at the Human Rights and National Sovereignty Workshop in Eisenach, East Germany. In February he attended a meeting in Ottawa to plan Canada's contribution to the Experts Meeting on Human Rights, which was held in Canada in May of 1985. Representatives from the 35 nations involved at the Madrid Follow-up Meeting of the Conference on Security and Co-operation in Europe attended this meeting to discuss the need for more progress throughout the world with respect to the Helsinki Final Act. Among other events, the Chairman was a panelist at a symposium on Human Rights Abuses in Eastern Europe, sponsored by Amnesty International at the University of Toronto. He also spoke at a fund-raising dinner sponsored by the Canadian Association of Rehabilitation Personnel to help famine victims in Ethiopia. In addition, he attended the Canadian Human Rights Foundation Conference on Human Rights and Canadian Foreign Policy, held in Ottawa in March.

Trip to the Soviet Union

At the end of the last fiscal year (March 1984), the Chairman travelled to the Soviet Union with a Canadian delegation including journalist Charlotte Gray of Ottawa, Robert Nixon, member of the Ontario legislature and the Reverend Stanford Lucyk of Timothy Eaton Memorial Church in Toronto. The purpose of the trip was to visit "Refusenik" communities in Moscow, Leningrad and Riga. Refuseniks are Russian Jews who have applied for, and who have been refused, exit visas from the Soviet Union.

Upon his return, Canon Purcell wrote: "Living in a part of the world where freedom of speech and thought are taken for granted, it is difficult for us to comprehend or

fathom a political system where the mere utterance of truth or the adherence to religious faith or the wish to emigrate in order to practise freely one's religion and beliefs elsewhere is fraught with cruel encumbrances, including imprisonment, exile, waiting for years for permission to leave, revocation of academic qualifications and other abuses."

The Chairman has spoken and written publicly about this trip since his return and has emphasized the need for Canada to insist that the Soviet Union, and other nations as well, live up to the obligations inherent in the signing of the Helsinki Treaty.

United Nations Declaration of Human Rights - 36th Anniversary

December 10, 1984 marked the 36th Anniversary of the United Nations Universal Declaration of Human Rights, whose principles form an integral part of the preamble to the Human Rights Code. The adoption of the Declaration was particularly charged with excitement because, for the first time, nations of the world spoke with one voice to proclaim the fundamental principles of human rights. The Declaration serves not only as an inspirational tribute to human values, but also as a commitment to the furtherance of universal social harmony.

The Commission once again paid tribute to the Universal Declaration and the principles contained therein, by way of 10,000 letters and lists of suggested celebratory activities sent to all schools, industry, unions, government agencies, religious institutions, and community groups, in both English and French. All schools received, as well, a copy of the Commission's 1983/84 Annual Report in French and English.

The Commission wrote special letters to municipal leaders, requesting them to proclaim Human Rights Day/Week, and to encourage observance of this event at the community level. Many municipalities responded positively to this request, by publishing and distributing official proclamations of support and adherence to the principles of human rights.

The Commission issued a press release about Human Rights Day/Week to all media representatives in Ontario, who, in turn, responded by way of radio, television and newspaper coverage of local events commemorating the Anniversary. Members of the Commission were interviewed by radio, television and the press.

Schools throughout the province responded with requests for classroom and assembly speakers, literature and assistance in designing a human rights component as part of the curriculum.

Ontario industries and businesses included articles on human rights in their internal publications, enclosed a letter about the significance of Human Rights Day and the Human Rights Code in employee's pay envelopes and requested Commission publications in quantity for distribution to their employees.

Non-governmental organizations and concerned individuals across Ontario were involved in a wide variety of activities in celebration of the 36th Anniversary, in co-operation with the Ontario Human Rights Commission and other agencies dedicated to the promotion of human rights.

On December 7, Canon Purcell addressed the opening meeting of the newly constituted Ontario Advisory Council on Multiculturalism and Citizenship, and focused his comments on the significance of Human Rights Day. He was also the

keynote speaker at a special commemorative Solidarity Hunger Fast for Soviet Jewry, which took place outside the Legislative Building on December 10.

Clearly, individual human rights commissions and human rights legislation will not end discrimination on their own. The Ontario Human Rights Commission has a uniquely important role to play, but it requires the assistance and responsibility of all individuals, organizations and institutions in our society in order to improve human rights and afford each individual the dignity and equality of opportunity that is his/her due.

LEGAL INITIATIVES

1984 / 85

Judicial and Quasi-Judicial Decisions

Early in the year, the first board of inquiry decision dealing with discrimination because of handicap, and indeed the first decision under the Human Rights Code, 1981, was rendered - Cameron and Nel-Gor Castle Nursing Home. In the decision, the board of inquiry reviewed the evolution of human rights law in Ontario and Canada. This decision is summarized at page 55 of this report. In essence, the board held that the complainant's handicap did not in any way limit her ability to perform the essential duties of the position that she was denied.

Other important issues have been addressed by boards of inquiry and courts this year. In the case of Mark and Porcupine General Hospital, the complainant was dismissed from her new position when the employer learned that she was married to another employee who worked in the same department. The board of inquiry interpreted "marital status" to include not just the status of being married, but also to apply to a case where the identity of the complainant's spouse is at issue. The board chairman noted, however, that the exemption contained in section 23(d) of the Code, which provides that an employer may grant or withhold employment or advancement in employment to a person who is the spouse of the employer or an employee, is limited to granting or withholding employment in the first instance. Thus, it does not provide for an employer to dismiss a person who is already an employee: "Once Mrs. Mark became an employee, she was entitled to the full protection of the Code." This case will undoubtedly have important implications for other complaints. A summary of this decision appears on page 57 of this report.

The application of certain provisions of the Canadian Charter of Rights and Freedoms was considered by the Divisional Court of the Supreme Court of Ontario in the case of Olarte et al v. Commodore Business Machines Ltd. and Rafael DeFilippis. In this case, counsel for the company had argued that his client had been denied the legal rights provided by section 11 of the Canadian Charter of Rights and Freedoms. However, section 11 only provides rights upon being charged with an offence, and the court found that a complaint under the Code is not charging a person with an offence; therefore, section 11 has no application. The manner in which the chairman of the board was appointed was also questioned, and the court concluded that there was no evidence to suggest that there was any bias operating in the appointment of the board chairman. The important question of similar fact evidence was also considered. The chairman had admitted and relied on the evidence of other female workers at Commodore that they had been subjected to sexual harassment by Mr. DeFilippis. The Divisional Court held that the board chairman had properly admitted and considered this similar fact evidence.

Boards of inquiry were appointed to consider two complaints alleging discrimination on the grounds of age, sex, marital status and family status in the issuance of automobile insurance policies. The two cases are Hope and Royal Insurance and Bates and Zurich Insurance. The hearing in the latter case concluded in March 1985. The board was requested to consider whether or not the differentiation in the policies on these grounds is reasonable and bona fide.

The important case of the Ontario Human Rights Commission v. Simpsons-Sears was heard by the Supreme Court of Canada during the fiscal year. The case is of national importance in that it concerns the issues of non-intentional discrimination and reasonable accommodation. A decision is expected in late 1985.

The complaint was filed under the Ontario Human Rights Code, R.S.O., 1980 which did not contain specific provisions with respect to constructive discrimination. Its application to cases involving this type of discrimination has never been judicially interpreted by the Supreme Court of Canada. The complainant alleged that her job was reduced to part-time because her religious beliefs made it impossible for her to work on Saturdays. When the board of inquiry dismissed the case, the Commission appealed the decision. The appellate court held that the previous Code prohibited intentional discrimination only and found that there was no intent on the part of Simpsons-Sears Ltd. to discriminate against the complainant because of her creed.

Although the new Code specifically includes constructive discrimination, the Commission decided to appeal the Court of Appeal's decision because of its far-reaching implications, not only for the determination of cases pending under the old Code, but also for other Canadian jurisdictions whose statutes lack specific mention of constructive discrimination. The Supreme Court of Canada granted leave to the Commission to appeal the decision and granted intervenor status to the Canadian, Manitoba, Saskatchewan and Alberta Human Rights Commissions, underlying the national importance of the issue.

Canadian Charter of Rights and Freedoms

The coming into force of the equality rights provisions of the Canadian Charter of Rights and Freedoms on April 17, 1985 has resulted in an increased public awareness of human rights.

The equality rights provisions are expressed in sections 15, 27 and 28. Section 15 contains substantive or fundamental equality provisions. Section 28 refers to sex equality and section 27 refers to the preservation and enhancement of the multicultural heritage of Canadians.

In keeping with the broad scope of the Charter, the list of protected grounds in section 15 is not exhaustive. The determination of what other grounds may be included in 'equality rights' is left open to judicial consideration. This is in contrast with the Code, where the list of prohibited grounds is exhaustive and protection is provided only to those areas cited in Part one.

Task Force and Royal Commission Reports

On another front, the fiscal year saw the release of several reports which have direct bearing on human rights. The second volume of the Report of the Task Force on Equal Opportunity in Athletics, "Can I Play?", was released and discussed the status of equal opportunity between the sexes in athletics in educational institutions - elementary and secondary schools, and colleges and universities. On the national scene, Judge Rosalie Silberman Abella's Royal Commission Report on Equality in Employment was released and studied the employment status of women, Native peoples, disabled persons and visible minorities in Crown corporations. While not directly involving provincial jurisdiction, the report sparked considerable public discussion on discrimination and equality issues.

The Role of Statistics in Proving Discrimination

The use of statistical analysis in discrimination cases is increasingly important as a result of the shift from an individual to a systemic perspective that has occurred in the last few years.

In the 1950's and 1960's, discrimination was perceived as a matter of isolated incidents resulting from the ill-will of prejudiced individuals. Case work was oriented towards identifying and "educating" those individuals. This approach met with little resistance and litigation was seldom necessary. By the 1970's, experience had demonstrated this approach to have little impact on improving the socio-economic situation of minorities and women and a new understanding of discrimination started to emerge. It is now clear that discrimination is a complex phenomenon resulting more from widespread practices than from isolated events. Discrimination is frequently the result of cultural, social and economic biases that have become institutionalized to the point of self-perpetuation.

Consistent with this perspective, case work now focuses on establishing the effects of these practices and on how to dismantle them. Settlement efforts now aim at obtaining specific, measurable gains for the affected groups, even though such measures are often perceived as a threat to the status quo and may be vigorously resisted. Statistics have therefore become an essential tool as they can best summarize the impact and extent of such practices and provide evidence of discrimination that is considered to be admissible by boards of inquiry and courts.

In the United States, the courts have, since the 1970's, with cases such as Griggs, McDonnell, Hazelwood and Hester, acknowledged the value of statistics. The merits of various statistical analysis models have been extensively litigated. At the same time, the courts are aware of the pitfalls inherent in a quantitative approach and have cautioned that:

"Too many use statistics as a drunk uses a lamp post -
for support and not for illumination".
(Keely v. Westinghouse, FEP Cases 1408 (E.D. Mo 1975))

However, their value is now beyond dispute and a great many of the substantial gains made by minorities and women through anti-discrimination legislation are attributable to the use of statistics.

Ms. Blake, a black woman who is over 40 years old, alleged that she had applied for a position as correctional officer at the Mimico Correctional Institute on three different occasions and was refused employment because of race, colour, age and sex. A board of inquiry was appointed to hear this complaint, and the decision of the board is summarized at page 61 of this report. It is highlighted here, however, because in Canada, statistical analysis is only recently emerging in anti-discrimination cases, and its use is being watched with special interest. The decision in Blake and the Ministry of Correctional Services, Mimico Correctional Institute, makes extensive use of statistics and provides guidance for future usage. It is therefore an important decision to consider. The evidence indicated that the hiring process was unstructured and highly dependent on subjective assessments. "Suitability" for the job, as defined by the interviewers, appeared to be the operative criterion. In such circumstances, the individual complainant's story must be placed in the context of the general hiring practices of the respondent in order to arrive at an assessment of the situation.

The Commission collected data and prepared an Applicant Flow Analysis for the two stages of the hiring process, that is, a comparison of the numbers and percentages of the applicants available, those selected for interviews, those rejected and those hired, according to their sex, race, ethnic origin and age. Substantial discrepancies were noted, with candidates who were male, white and under 40 being interviewed at higher rates than candidates who were female, non-white and over 40. These discrepancies increased multi-fold from the interview to the hiring stage, especially with reference to sex. The chart below summarizes the analysis according to sex that was presented to the board. A similar analysis, with similar, though less dramatic results, was introduced for racial and ethnic origin and age.

	Males		Females	
Applicants	423	100%	172	100%
Interviewed	132	31% (of 423)	32	19% (of 172)
Hired	49	37% (of 132)	2	6% (of 32)

The statistical analysis also showed that height and weight were significant factors in determining who would be interviewed and hired. An expert statistician testified that he had performed multiple regression analyses to ensure that groups were measured simply on the basis of sex, height/weight, ethnic origin and race, with other factors such as education being held constant. The results of these analyses indicated that sex, ethnic origin and age were used as significant predictors of whether or not a candidate would be interviewed and hired. Moreover, the statistician's regression analyses showed that, considering all factors, ethnic origin and weight were the two most significant factors in deciding who would be interviewed and who would be hired.

The board considered the issue of whether the employer's requirement for physical size had an adverse impact on women, and noted that the employer had not argued that weight was a bona fide occupational qualification and had in fact denied that there was any minimum weight standard. There was also consideration of testimony regarding comments by officials at Mimico that were sexist and racist in nature. In review, the board chairman found that ". . . sex was the main ground at issue" and determined that "a prima facie case of discrimination because of sex under the Code was made out by statistics alone in this inquiry". It was also the opinion of the board that discrimination because of sex was endemic to the recruitment system at Mimico until a new superintendent was appointed in 1977.

Once a prima facie case is established by the complainant, the burden of proof shifts to the respondent who may then rebut the allegations by presenting evidence of a legitimate reason for the practices in question. In this instance, the superintendent explained his reasons for not hiring Ms. Blake, on the basis of her performance during the employment interview, and outlined his efforts to objectify and professionalize the recruitment process. The board accepted these explanations and found that discrimination was no longer being practised at Mimico. Hence, the complaint was dismissed and no settlement (specifically, affirmative action and monitoring of hiring as requested by the Commission) was imposed.

With respect to the use of statistics, the decision is important on several points. It establishes a Canadian precedent that statistics alone can make out a *prima facie* case of discrimination, a premise which is especially meaningful where the evidence is not linked to a particular individual's complaint. It also clarifies several thorny issues with respect to the use of statistics: human rights officers can be used to collect and analyze data, subject to cross-examination as to the methods used. A determination may be made of the race and ethnic origin of candidates from information on application forms such as surnames, place of education and work experience, along with personal contacts where doubt exists. Also, statistical evidence cannot be rebutted by mere assertions as to its deficiencies. Rather, the rebuttal must show that those deficiencies affected the statistical results in a systematic way and that they, rather than discrimination, accounted for the discrepancies in question.

Commission Procedures

In response to the continuing evolution of administrative law and concepts of administrative fairness, the Commission this year examined its procedures and formalized its policies regarding disclosure of the findings of the investigation to complainants and respondents, in order to afford a greater degree of fairness to both sides. Parties involved in a complaint with the Commission have the right to know in writing the substance of the findings of the investigation and the right to have an opportunity to make written submissions to the Commission regarding a case. While the Commission has been affording this opportunity to both sides for several years, the procedures are now formalized and standardized across the province. Formerly, the parties were informed verbally of the investigation findings; these findings are now provided in writing.

ROLE AND ACTIVITIES OF THE
RACE RELATIONS DIVISION

1984/85

The Race Relations Division of the Ontario Human Rights Commission was formally established in 1979 to replace the Community, Race and Ethnic Relations Unit.

Under section 27(2) of the Code, it is the function of the Race Relations Division to perform any of the functions of the Commission under section 28(f), (g) or (h) relating to race, ancestry, place of origin, colour, ethnic origin or creed that are referred to it by the Commission, and any other function referred to it by the Commission.

Section 28(f), (g) and (h) provide that it is the function of the Commission:

- to inquire into incidents of and conditions leading or tending to lead to tension or conflict based upon identification by a prohibited ground of discrimination and take appropriate action to eliminate the source of tension or conflict;
- to initiate investigations into problems based upon identification by a prohibited ground of discrimination that may arise in a community, and encourage and coordinate plans, programs and activities to reduce or prevent such problems;
- to promote, assist and encourage public, municipal or private agencies, organizations, groups or persons to engage in programs to alleviate tensions and conflicts based upon identification by a prohibited ground of discrimination.

In carrying out its mandate, the Division promotes the principle that human rights and harmonious race relations cannot be achieved by human rights commissions alone. The co-operation of all members of the society is integral to the effectiveness of the Division's programs. It is clearly stated in the Code that, in responding to community tension and conflicts, both preventive and remedial approaches must be taken. During fiscal year 1984/85, the Division streamlined and reorganized its programs by establishing three main units - Policy and Program Development, Operations, and Finance and General Administration. This reorganization facilitates the implementation of the Division's programs which include the development of resource materials, the holding of consultations, seminars, and conferences with community groups and institutional representatives, the monitoring of the current race relations climate, as well as the mediation of race-related conflicts and tensions in the community.

ACTIVITIES, 1984/85

COMMUNITY, RACE AND ETHNIC RELATIONS

Youth Employment

Metropolitan Toronto

The high unemployment rate and its particularly severe impact on racial minority youth in Metropolitan Toronto continued to be a critical issue during the fiscal year. In its effort to defuse racial and ethnic tensions and to improve the race relations climate, the Division continued its special youth employment project in the summer of 1984.

This project, funded by the Ontario Youth Secretariat, is in its fourth year of operation. It provided for the placement for a period of eight weeks of over 100 young people from several neighbourhoods in the Metropolitan area in a great variety of jobs. In addition to gaining valuable work experience, these young people received race relations and life-skills training.

With the assistance of community advisory committees, composed of representatives of local agencies and institutions, the Division recruited participants, sponsored employers, and selected resource persons. In planning the project, the Division endeavoured to ensure that the racial mix of the participants reflected the racial composition of the unemployed youth in the area.

In a continuing effort to improve police-youth and police-minority relations in Metropolitan Toronto, the Division and the Metropolitan Toronto Police co-sponsored, for the second year, a youth employment project in the summer of 1984. This project enabled 35 youths from multi-racial backgrounds to work closely with the police in delivering services to senior citizens for a period of eight weeks. Modelled upon the Division's own summer youth employment project, it also provided race relations and life-skills training for the participants.

For the second year, the Division also conducted its Winter Youth Employment Project in Metropolitan Toronto. This 16-week project, designed to assist young people in gaining first-time job experience during the winter, was modelled upon the summer projects conducted by the Division.

Southwestern Ontario

In 1984, the Division expanded its summer youth employment project to include the city of Windsor. This project was also funded by the Ontario Youth Secretariat and 13 young people were placed with various employers in the private sector. Many community group representatives assisted the Division in planning the project and contributed to its success. In addition, the Ministry of Labour's Personnel Branch provided invaluable assistance during the recruitment, screening and hiring process.

Municipal Involvement

Metropolitan Toronto

A primary objective of the Division is to encourage and assist municipal governments to engage in proactive programs designed to avert the development of racial tensions. A number of race relations issues emerged in Scarborough during fiscal year 1984/85, including the dissemination of hate literature against Chinese-Canadians. In May 1984, it was reported that derogatory comments about Chinese-Canadians were being expressed by white residents of Agincourt, relating to the establishment of a new Chinese shopping centre in the area. While a number of residents cited concerns about traffic and parking issues relating to the mall, many were simply expressing anti-Chinese sentiment.

In response to this problem, the Federation of Chinese-Canadians in Scarborough was formed with the aim of promoting an improved race relations climate in Scarborough. In addition, the Scarborough Mayor's Task Force on Multiculturalism and Race Relations prepared a report on race relations issues in the community. The Division played an instrumental role in assisting the Task Force to research this report. The Federation of Chinese-Canadians in Scarborough was represented on the Task Force.

After the submission of the Task Force report, the Scarborough City Council struck a committee to develop a strategy for addressing race relations and multicultural issues. The Division has assisted the committee in an advisory capacity.

The Division continued to provide advice and assistance to various municipal committees on race relations in Metropolitan Toronto.

Southwestern, Hamilton-Niagara and Eastern Regions

In Hamilton, allegations were made by various individuals, religious organizations and labour groups regarding racial discrimination against taxi drivers of South Asian descent by several taxi companies. The Division, in co-operation with several community groups, assisted in the planning and co-ordination of a steering committee which was asked to develop a formal proposal to the Mayor and City Council of Hamilton on the creation of a municipal race relations committee. Formal complaints against the taxi companies were dealt with by the Conciliation and Compliance Division.

In Windsor, the Division played a significant advisory role to the Mayor's office with respect to the proposed formation of a municipal committee on race relations.

The Division also assisted the City of Ottawa in preparing and implementing its policy on multiculturalism.

Public Education

The Race Relations Commissioner, Dr. Bhausaheb Ubale, continued to engage in activities focusing on the promotion of harmonious race relations in the province through public education and consultation. During fiscal year 1984/85, the Commissioner participated in 96 public education undertakings. He consulted with community leaders and representatives from various institutional sectors, and

sponsored a number of forums to promote a better understanding of race relations and the contributions of racial minorities to community life. These included an exhibition of the work of two prominent Black artists and a public lecture on "Affirmative Action".

Mrs. Bev Salmon, also a Commissioner of the Race Relations Division, also conducted or participated in public educational and consultative activities during the year, as did members of the Division's staff. Public educational activities totalled 448, and 21 public education projects were undertaken.

Metropolitan Toronto and its Surrounding Regions

The Division continued to assist various community groups in the Municipality of Metropolitan Toronto and surrounding regions in developing and delivering educational projects to enhance the race relations climate. Two important conferences were organized in fiscal year 1984/85: The Tropicana symposium and the conference of the Peel Intercultural Relations Association.

In August, 1984, the Division and the Tropicana Community Service Organization organized a youth symposium to examine several issues of great concern to young people: the family, the community, education, employment and law enforcement. Over 120 young people from the Scarborough area participated in this symposium. The Division was involved in the planning and organizing of this symposium and in preparing a report of its proceedings. The symposium proved to be an excellent opportunity for youth to express their concerns and to dialogue with the agencies and institutions that serve them.

For the past several years, the Peel Intercultural Relations Association (PICRA) has played a major part in promoting racial harmony in the Peel region. The Division provided assistance to PICRA in organizing a conference entitled "Common Denominators in a Multiracial, Multilingual and Multicultural Society". It was held on the eve of the 36th Anniversary of the United Nations Declaration of Human Rights. Many social workers, members of racial and ethnic minorities, politicians and religious leaders attended the function. This conference provided a forum for discussing the role of social service agencies in a multiracial community.

"Black Perspective" is a community-based organization in Regent Park, Toronto. The Division provided assistance to the organization's programs during Black History Month in February, 1985. These programs aimed to promote a positive image of Black artists and their contribution to the community and province.

Northern Ontario

As one example of the Division's efforts to promote a greater understanding of Native peoples among employers and educational institutions and to provide vocational information for Native students, the Division's staff assisted in organizing the Native Cultural Awareness and Career Fair Day in Timmins. Native students from Timmins, Kapuskasing, Hearst, Cochrane and the Gogama region, as well as non-Native students, teachers and administrators attended the event.

The Division also recognizes the valuable contribution of members of the community in the area of human rights. The Division staff in Timmins presented a human rights plaque to a grade 12 Native graduate in recognition of the student's academic performance and involvement in race relations activities.

Mediations

Following are two examples of the mediation of community conflicts and individual disputes which continued to be an integral component of the Division's work during the fiscal year.

The Division received complaints from the Sikh community in Brantford alleging discrimination against Sikhs by the police. The situation was compounded by poor police-Sikh relations in that city. The Division provided assistance to the newly formed Brantford Race Relations Committee and, along with the Brantford City Police, organized a meeting with Sikh community representatives to resolve the dispute.

The complainant, a woman of Chinese origin, alleged that she was subjected to discriminatory treatment by a Toronto Transit Commission Collector who made racially derogatory remarks to her and confiscated her Metro Pass. The incident occurred when the complainant, by mistake, copied the pass number instead of her I.D. Card number on her Metro Pass. The Collector accused her of using her husband's pass despite the fact that the pass had the complainant's name, picture, signature, address and telephone number. The Collector did not allow her to ride the bus.

Subsequently, the complainant contacted the T.T.C. head office and made a complaint. The supervisor who responded to her call defended the Collector's actions and threatened to charge her with fraud.

The complainant felt that her sex and race were the motivating factors for this prejudicial treatment. She contacted the Division for assistance.

The Division contacted the T.T.C. and alerted them to the complainant's concerns and the provisions of the Code. An internal inquiry was conducted and it was determined that the Collector had acted unfairly and improperly. He was informed of this fact, and the complainant received an apology from the T.T.C. She expressed her satisfaction with this outcome.

The Division also deals with complaints alleging the stereotypical portrayal of racial minorities by the media. As an example, a newspaper featured a caricature of a person with slanted eyes, buck teeth, holding grasshoppers and referred to the term "Japs". After receiving the complaint, the Division staff met with newspaper representatives and the paper printed an apology in the next issue.

Community Development

In the Lawrence Heights community of North York, community tensions developed with respect to police-youth relationships, a lack of adequate recreational programs, and youth unemployment. The Division, in response to conflict between the police and youth, investigated the situation and met with the disputing parties. Working closely with various agencies, groups, institutions and community leaders, the Division negotiated a successful resolution of the conflict.

A primary factor contributing to this outcome was the establishment of the locally based Lawrence Heights Progressive Association. It is composed of local minority youth who are now able to negotiate with the police and the Department of Parks and Recreation regarding recreational programs. The creation of local mechanisms of community participation to deal with race relations issues is a chief objective of

the Division in its community outreach program, and these initiatives have met with considerable success.

WORKING WITH INSTITUTIONS

During the year, the Division worked with numerous institutions in response to race relations issues, assisting them to implement policies and programs designed to prevent racial discrimination.

Educational Institutions

In 1983, the Race Relations Division established a Consultative Committee on Education. The role of the committee is to advise the Division about race relations issues and problems in educational institutions and to develop the strategies and solutions needed to address them.

In this capacity, the Consultative Committee recommended that two concerns be examined during the fiscal year: 1) the negative impact of streaming and assessment on minority students; and 2) the fact that few boards of education in the province have race relations policies to assist them in serving an increasingly multiracial school community.

Accordingly, the Consultative Committee formed two sub-committees, one to prepare a document outlining race related issues in streaming and assessment along with recommended strategies to deal with them, and the other to prepare a model race relations policy. The work of these sub-committees is well underway and it is expected that the resource material they develop will be distributed to school boards throughout the province during fiscal year 1985/86.

The Division and the Hamilton Board of Education co-sponsored the development of human rights curricula for Grades 9 and 10 English and Grades 11 and 12 Man and Society courses. This resource development project has produced 14 curriculum units to date on such topics as prejudice and stereotyping and their effects on racial minorities. These will be tested as a pilot project in the upcoming academic year before being made available to school boards throughout the province.

The Division commissioned a film from Dr. Ahmed Ijaz, a well-known Toronto education consultant. The film is based on Dr. Ijaz's research into the racial attitudes of elementary school children, and addresses the question of how to effectively teach racial tolerance and acceptance. In March 1985 the Division premiered this film, entitled "Can Racial Attitudes Be Changed?" in Toronto. Many educators and community representatives attended the screening.

The Division continued its ongoing work with specific school boards, assisting them in developing and implementing race relations policies. These boards included Toronto, North York, Scarborough, East York, and the Metropolitan Toronto Separate School Board.

In Windsor, the Division's officer served as adviser to the Windsor Board of Education in the drafting of its Race Relations Policy. The proposed policy has been adopted by the Board. The Division continued to provide assistance to Windsor educational institutions in holding seminars and conferences for students and teachers, with the aim of promoting racial harmony in the school setting.

Similarly, the Division's staff also assisted in the development of the Ottawa Board of Education's Race and Ethnic Relations Policy as well as its implementation plan. The Division, along with the Ministry of Education, the Ottawa chapter of Teachers of English As a Second Language, and local boards of education, organized the first Multicultural/Multiracial Youth Leadership Program to be held in the Ottawa area.

Business & Industry

In fiscal year 1984/85, the Division published a "Workbook on Equal Opportunity in Employment." This workbook, developed in co-operation with the business community, is a practical training manual in which the reader works through a series of quizzes, case studies and scenarios. It explores a number of difficulties that face managers working in a multiracial and multiethnic work environment, and how they can respond to race relations and equal opportunity issues. The Division launched the workbook in June, 1984 with a reception attended by 150 representatives of the business community. Since this time, the book has been distributed widely throughout the province in response to a great demand from employers and schools of business.

The Division's staff in Ottawa participated on a committee composed of representatives of various municipal, federal and community organizations in the area of human rights and race relations. This committee is developing a feasibility study on race relations and equal opportunity issues based upon interviews with major private and public sector employers and unions.

In addition, the Division has provided race relations training for a number of employers ranging from half-day to two-day presentations as well as giving speeches and seminars to business associations and individual companies.

Unions

The Division has worked extensively with the Ontario Federation of Labour, assisting the Federation with its continuing anti-racism campaign. The Division assisted in the design, planning and implementation of six regional workshops held by the OFL to raise awareness of and develop skills in race relations for union members. Following these regional workshops, a conference was held in Toronto to review and consolidate the initiatives the OFL has taken in its anti-racism campaign and to plan future initiatives. The Division, in co-operation with OFL staff, has also developed a case studies manual on race relations in the workplace.

Media

An initiative taken by the Division in this sector during the fiscal year has been to develop a formal liaison with the Ontario Press Council. Members of the Commission and Division met with the Council to discuss complaints about racist or racially insensitive material in the press, and to develop a procedure whereby the Division may refer complaints about this type of material to the Council.

In Ottawa, the Division, along with the National Capital Alliance on Race Relations, the Human Rights Centre, and the Canada Film Institute co-sponsored a highly successful film festival on discrimination, racism and efforts to combat them.

The Criminal Justice System

The Division has maintained its liaison with the Metropolitan Toronto Police Force and referred relevant cases and community disputes to its Ethnic Relations Squad. The Division also continued its participation on the Metro Council on Race Relations and Policing.

Police training is an integral part of race relations work. During the fiscal year, the Division's staff co-ordinated and conducted ten workshops for all uniformed officers of the Thunder Bay Police Force. These workshops dealt with the dynamics of prejudice, stereotyping and discrimination, the provisions of the Human Rights Code and policing in a multiracial society. Case studies and role plays were used to enhance the workshop discussions.

The Division also assisted Confederation College in Thunder Bay to prepare resource materials on visible minority-police relations, which have been incorporated into the curriculum of the College's Law and Security program. In Metro Toronto, the Division is also developing resource materials to be used in police race relations training.

The Cabinet Committee on Race Relations

The Division continued to serve on the Staff Working Group established by the Cabinet Committee on Race Relations. The Race Relations Commissioner and staff assist the Cabinet Committee with respect to race relations issues as they relate to the responsibilities and programs of the Government of Ontario.

In 1984, the Division participated on various task forces and work groups formed by the Cabinet Committee in areas such as advertising and communications, education, publicly assisted housing, employment issues in the public service, youth employment, and the needs of visible minority women.

RESEARCH

Research on race relations issues is an integral part of the Division's work. It provides a necessary tool in formulating the Division's policy initiatives and provides valuable information for program implementation.

The Division has compiled a bibliography of race relations documents in the Ministry of Labour library and is preparing a paper on the changing race relations issues and climate in Ontario, and the policy and program initiatives undertaken in response to these issues.

In response to requests from the community, the Division offers research assistance. For example, when the Scarborough Mayor's Task Force on Multiculturalism and Race Relations approached the Division, research assistance and resource materials were provided.

Based on complaints by a number of health care workers of racial minority background, the Division, through an independent research consultant, launched a research project on the employment of visible minorities in the health care industry.

DISCRIMINATION BECAUSE OF HANDICAP

Fiscal year 1984/85 completes the second successful full year of implementation of the provisions of the Code relating to handicap. Statistics on complaints received over the year indicate that the volume of complaints alleging discrimination because of handicap continues to exceed the number of complaints on any other single ground.

The Code provides the right to freedom from discrimination on the ground of handicap in the areas of services, goods and facilities, accommodation, contracts, employment and membership in vocational associations. Harassment because of handicap is also prohibited in employment and accommodation.

Handicap is defined as any degree of physical disability, mental retardation or impairment, learning disability or a mental disorder. In addition, a person may not be discriminated against because he or she has received Workers' Compensation. Lack of appropriate means of access does not, by itself, constitute discrimination contrary to the Code. Also, it is not a contravention of the Code to deny a person a job, service or accommodation if the only reason is that the individual is incapable of performing the essential duties or requirements of a job, or is incapable of fulfilling the essential requirements of a service or accommodation.

Questions about illnesses, injuries or medical histories, in the past or in the present, may not be asked on an application form or at any stage prior to a personal interview. Employers may raise questions regarding the extent of an applicant's handicap as it affects his or her ability to do the job, only during a personal interview.

Similarly, an employer may require an applicant to undergo a job-related medical examination either during or after the interview process, but not before, and such medicals should be related to job performance and apply equally to all applicants. In addition, the results of medical examinations should be used only to determine the person's ability to perform the essential duties of the employment.

These provisions address common concerns that persons with disabilities have been denied employment opportunities because of traditional prejudices against them, together with lack of knowledge of their capabilities and potential. Ignorance about the abilities and aptitudes of persons with handicaps may deter employers from granting them a personal interview, and it has been the Commission's experience that qualified applicants with handicaps are being excluded from jobs without a determination being made as to whether the individual is able to perform the essential job functions.

The emphasis of Ontario human rights legislation has been on voluntary compliance with a conciliatory approach. Cases of discrimination because of handicap are handled by the regional staff, who receive specialist guidance through an administrative arrangement established because of the unique and complex features of complaints based on handicap. Professional expertise is often necessary to assist the Commission in making decisions as to what constitute the essential duties of a job on one hand, and the individual's ability to perform them, on the other. Other complex cases requiring expertise include those involving novel tests of jurisdiction, and complaints in which the validity of employment tests and other screening procedures are at issue.

ACTIVITIES 1984/85

Conciliation and Compliance

The Commission staff continue to assist employers in their understanding of the provisions of the Code by reviewing their pre-employment screening measures, such as advertising, application form review and pre-employment medicals. In addition, employers are assisted in developing appropriate measures to determine the essential duties and requirements of specific jobs as these relate to the individual's ability to perform them. Educating employers about recruitment strategies that will inform handicapped individuals and their representative organizations of employment opportunities is another important responsibility.

Through direct negotiations with public and private associations and agencies, as well as individual respondents, Commissioners and staff are also engaged in ensuring equal treatment in the areas of services, accommodation, and contracts.

Complaints of Discrimination

During the period of April 1, 1984 to March 31, 1985, the Commission received 438 formal complaints. Over this period, 193 were settled, 37 were dismissed by the Commission either due to lack of jurisdiction or lack of evidence to substantiate the complaint, and 44 were withdrawn by complainants.

Of the formal complaints filed, 388 have been on the ground of physical handicap and 50 have been on the ground of mental handicap. The types of handicaps are shown in Table 5.

The Commission staff continue to make progress in such major issues as physical standards established for firefighters and police officers, such as visual acuity, colour blindness, obesity, diabetes and allergies to ensure that the employer's selection criteria and screening procedures are valid and job-related.

With regard to visual acuity and colour blindness, the staff have worked closely with the Canadian Ophthalmologists' Association, Provincial Fire Marshalls, and Chiefs of Provincial Police Departments to establish valid and reliable criteria and testing procedures for standardizing the selection process in the recruitment of fire fighters and police officers.

The Commission continues to receive complaints from handicapped individuals against insurance companies who have refused them coverage because they are believed to be at a greater risk than non-handicapped applicants. Many complaints have been successfully resolved as a result of enforcing the provisions of the Code which require that: (1) all assessments be made on individual merit, and (2) valid and reliable evidence be provided by the respondent to demonstrate that the exclusion is reasonable and bona fide.

During the fiscal year, consultations have been held with occupational therapists, physicians, vocational rehabilitation counsellors, and other medical specialists about accommodation, aids and adaptations and to explore areas such as Physical Demands Analysis, Functional Capacities Assessments and medical reviews. These techniques attempt to determine the job performance ability and potential of individual complainants. Contacts have been established and maintained with agencies such as the March of Dimes, the Workers' Compensation Board, Vocational Rehabilitation Services of the Ministry of Community and Social Services and the Ministry of Education.

On April 30, 1984, the first board of inquiry decision on the ground of handicap was rendered: Cindy Cameron and Nel-Gor Nursing Home and Merlene Nelson. Ms. Cameron alleged denial of employment as a nurse's aide in the respondent's nursing home because of a congenital malformation of her left hand, which resulted in three fingers being shorter than normal. The board found that in order for a respondent to prove that no unlawful discrimination has occurred, it must be established on an objective basis that the complainant is incapable of performing or fulfilling the essential duties or requirements of the job because of a handicap. Respondents cannot rely upon mere "impressionistic" evidence.

In Ms. Cameron's case, the evidence clearly established, in the view of the board, that she was capable of performing the essential duties or requirements of the nurse's aide position. The board accepted the evidence of an occupational therapist who performed an analysis of the physical demands of the job and compared it with the functional capacities of Ms. Cameron to demonstrate her ability to perform the job.

The complainant was awarded \$4,551 in compensation for lost wages, general damages and interest. The respondent was ordered to offer the complainant the next available nurse's aide position. The respondent has filed notice of appeal from the decision and order in the Supreme Court of Ontario, Divisional Court.

Public Education

The Commission continues to provide an educational and consultative service on a province-wide basis for business, industry, unions, vocational associations, professional associations, health care professionals, educational systems, inter- and intra-governmental agencies, voluntary groups and religious associations.

Further, members of staff conduct seminars on the Code's provisions relating to handicap for supervisors and managers with the Ministry of Community and Social Services, the Workers' Compensation Board, and other ministries, agencies and organizations.

Among these agencies and organizations are the Brantford, Ajax, Pickering and Whitby Associations for the Mentally Retarded, and the Canadian Mental Health Association.

Inter-provincial consultations have been held with other human rights commissions such as those of Alberta, Saskatchewan and Newfoundland.

A primary goal of public education is to establish ongoing working relationships with those groups and communities that the Code is designed to serve. For example, such a relationship has been established with the Canadian Diabetic Association - Ontario Division. Through consultation and information exchange, the following benefits are achieved:

- Persons with diabetes in Ontario are fully informed of their rights with respect to access to essential services, employment (including remaining in the job following diagnosis), and the regulations and policies affecting such matters as driver's licences and insurance.

- Those with diabetes gain an understanding of the role of the Ontario Human Rights Commission and how to file a complaint.
- Commission staff are informed about diabetes and its impact on life style and employment.
- Commission staff are provided with names of expert witnesses on diabetes for the purposes of testifying before boards of inquiry or providing evidence related to complaints.

In order to reach a large number of employers in the province, Commission staff regularly participate in seminars arranged through the Personnel Association of Ontario.

The Commission has extended access to its services to those who are hearing impaired by installing a TDD (telecommunication device for people who are deaf). The telephone number is (416) 965-6871.

To further increase the awareness of the rights of handicapped persons, the Commission's staff conducted workshops and seminars throughout public and separate school board systems, colleges and universities.

Staff Training and Development

Training sessions for the Commission's staff on the legislation pertaining to handicap are conducted on a regular basis at regional staff meetings and workshops. In-house seminars and consultations for staff are also conducted by organizations and agencies dealing with issues relating to handicap.

The Commission continues to develop and acquire resource information about discrimination against disabled persons. These materials deal with such subjects as existing legislation that protects the rights of the handicapped, and related legal interpretations and case law. This information allows staff to keep abreast of new developments in North America and overseas.

Program Development and Research

Current activities in the areas of program development and research include a study on pre-employment testing. This report is an extensive scrutiny of pre-employment testing and its validity and reliability in relation to human rights legislation. The report commences with a historical overview of testing methods and examines Canadian and American legislation and case law relating to the impact of testing requirements on job applicants with handicaps. It also deals with the area of constructive discrimination as prohibited in the Ontario Code. It outlines and analyses specific testing procedures, using as examples particular corporations and their methods. These corporations have been extremely co-operative in providing us with information, and in granting interviews with their directors of personnel and medical departments.

The studies on reasonable accommodation of the handicapped and discrimination on the basis of disability in insurance and benefit plans which were conducted during 1983/84 will be available to the public in 1985.

The study on reasonable accommodation provides an analysis of how the concept of reasonable accommodation is defined and applied in several jurisdictions in Canada and the United States. It examines the extent of the employer's duty, how the courts and boards of inquiry have interpreted that duty, the relevance and usefulness to the Ontario Commission of any guidelines that have been established in this area, how "undue hardship" to the respondent is interpreted and applied and, finally, the relevance and practical implications of any existing accessibility standards.

Discrimination on the basis of disability in insurance and benefit plans reviews sections 21 and 24 of the Code and evaluates these sections in comparison with similar provisions in other jurisdictions. It examines the process used by the insurance industry to identify persons who are believed to represent increased risks because of their handicap. A basic premise of human rights legislation is that each individual has the right to be evaluated and subsequently treated on the basis of his or her own merits. However, the insurance industry has traditionally assessed the insurability of individuals on the basis of group characteristics.

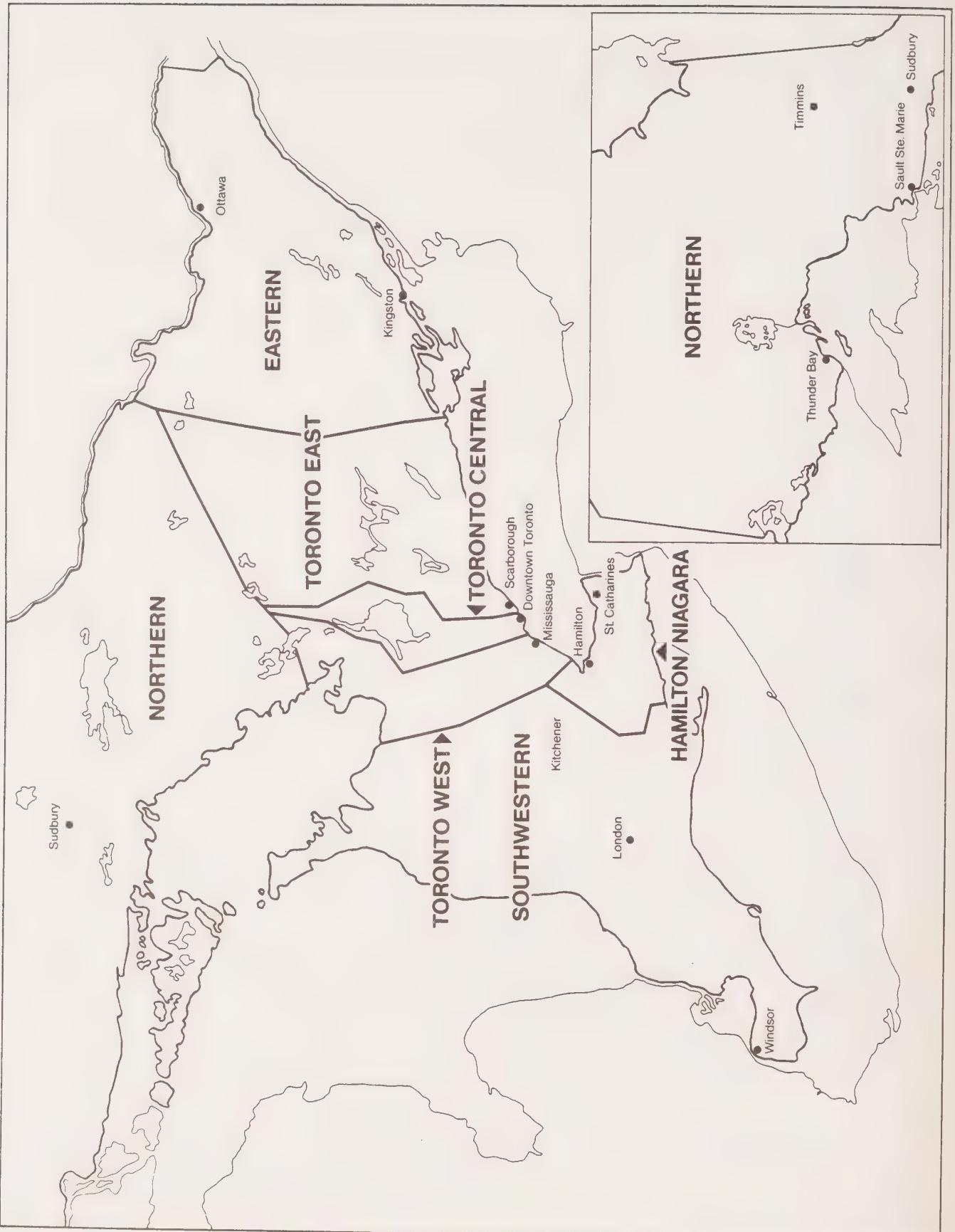
Group Homes

Due to a growing trend toward de-institutionalization, group homes for ex-offenders, ex-psychiatric patients, and physically and mentally disabled persons have been established in the community in recent years. This is a new concept and has met with a great deal of resistance in the community. The Commission is receiving a growing number of complaints of harassment in accommodation from the residents and members of staff of group homes.

These complaints reflect considerable concern on the part of group home residents and their families, who feel threatened by the negative sentiments expressed by residents' and ratepayers' associations. Accordingly, the Commission is consulting with officials of the ministries and agencies responsible for the establishment of group homes, in efforts to develop a co-ordinated educational response to community concerns about these facilities. Thus, it is hoped to address the negative stereotypes and myths about the effects of group homes on residential neighbourhoods.

International Responsibilities

1983-1992 has been proclaimed the Decade of Disabled Persons by the United Nations. Following a federal-provincial-territorial ministerial conference on human rights in September, 1983, ministers expressed their support for the United Nations Decade of Disabled Persons, and instructed the Federal-Provincial-Territorial Continuing Committee of Officials Responsible for Human Rights to engage in a consultation process for the development of a plan of action. A working committee established for this purpose includes representation of the Ontario Human Rights Commission. The committee has submitted its report and recommended that a plan of action be created and implemented within each jurisdiction in consultation with community organizations, agencies and sectors with an interest in promoting the rights of persons with handicaps.



REGIONAL ACTIVITIES

1984 / 85

The Commission's programs are carried out in seven regions and 16 district offices, as indicated on the map on the facing page.

In 1984, the Conciliation and Compliance Division and Race Relations Division were restructured and reorganized to respond more effectively to the large increase in complaints, community problems, inquiries and referrals resulting from the new provisions of the Code. The new organizational structure of the Race Relations Division is described on page 19.

The Conciliation and Compliance Division has been reorganized to provide more effective services to two major areas of the province; two Directors now have the responsibility of supervising program delivery in all regions. One Director supervises the Eastern, Hamilton-Niagara, Northern and Southwestern Regions, as well as the Unit for the Handicapped and the other is responsible for program delivery in the three Metropolitan Toronto regions.

An important initiative for fiscal year 1984/85 was to respond more effectively to the issues relating to discrimination that are increasingly being raised by the racial, ethnic and immigrant groups and organizations at the local level in the Metropolitan Toronto area.

Statistical tables reflecting complaints received during the fiscal year in each of the seven regions may be found on page 69.

Toronto Central Region

This region was created in 1981, when the Commission's caseload had expanded to a point where complaints in the Metropolitan Toronto area could no longer be administratively dealt with by the two existing regions, Toronto East and Toronto West. The boundaries of Toronto Central Region extend from the downtown core, northward to Barrie and Burk's Falls.

In fiscal year 1984/85, the region experienced an increase in complaints alleging discrimination because of race and colour relative to those on other grounds. The number of complaints based on these grounds is second only to those based on handicap.

The Commission has witnessed a greater awareness of and interest in human rights protection among Toronto's racial, ethnic and community organizations, and there has been an increase in complaints from members of racial and ethnic groups which traditionally did not seek to file complaints under the Code. There has, for example, been a significant increase in complaints from South East Asian communities.

Another interesting aspect of the region's caseload over the year was a large number of complaints alleging age discrimination, resulting from redundancies, layoffs, and early retirement. These kinds of complaints have posed interesting legal questions for the Commission. Of note is the occupational status of these complainants. No longer are the majority of complainants alleging age discrimination blue collar or factory workers; they include many middle-management personnel who are forced

out of their positions by companies caught in the economic squeeze. Traditionally, many of these complainants would have launched wrongful dismissal suits. However, they have begun filing complaints with the Commission in recent years.

In addition to the region's public education program, staff have developed and maintained co-operative working relationships with employment and labour organizations, educational institutions and social service agencies in the Toronto area. As an example, a member of the region's staff provides advice and assistance to the Metro Children's Aid Society, which established a multicultural task force in 1978 to examine the agency's policies and programs in light of the racial and ethnic diversity of Toronto's population. The report of the task force was accepted by the Board of Directors in 1983, and the implementation of its recommendations began shortly thereafter.

Toronto East Region

The regional headquarters of the Toronto East Region were moved from downtown Toronto to Scarborough in 1982, thus ensuring that the Commission's services are readily accessible to the community. The region includes Toronto's eastern suburbs, and extends northward to Algonquin Park and eastward to Trenton.

The region accounted for 21 per cent of the total complaints received by the Commission this fiscal year, or 341. Of these, 27 per cent related to handicap, 19 per cent to race, 15 per cent to sex, 9 per cent to age and the remaining 29 per cent were distributed among all the other grounds. These percentages are similar to the ones experienced province-wide, excepting the figure for race complaints, which was lower than both the provincial and Metro averages.

In the three-year period since the regional office opened in Scarborough, the region has witnessed a large increase in complaints from towns and cities beyond the Metropolitan Toronto area. This is primarily due to a comprehensive public education and outreach program directed at such centers as Peterborough, Oshawa, Lindsay and Bobcaygeon.

The region's staff conducted and participated in a number of events in Peterborough, commemorating Human Rights Day on December 10, 1984. The Mayor of Peterborough and civic officials took a great interest in celebrating the anniversary of the United Nations Declaration of Human Rights, and the events received media coverage.

The Commission also conducted a series of seminars with senior and line managers in the Municipality of Peterborough during the fiscal year, and regional staff are designing a similar event for all levels of management of a large oil Company.

Toronto West Region

The headquarters of this region were also relocated in 1982, to the City of Mississauga. Toronto West includes Peel Region and part of Halton Region, extending to Oakville to the south and west. The regional boundary extends northward to the Nottawasaga Bay area.

The region received 16 per cent (263) of the total cases received by the Commission this fiscal year. The largest number of cases were on the ground of race: 29 per cent, a percentage markedly higher than those for the province and Metro. This reflects the fact that racial minorities are heavily represented in the manufacturing plants located throughout the region.

In the summer of 1984, regional staff conducted an extensive public educational program for employers in this heavily industrialized area of the province. Staff assisted many employees in bringing their employment practices in line with the provisions of the new Code. Outreach initiatives were also conducted with Boards of Education and Community Colleges in the region.

Eastern Region

The Commission's Eastern Region covers the geographical area east of Trenton, extending northwards from Lake Ontario and the St. Lawrence River to the Quebec border. Its headquarters are in Ottawa and a district office is located in Kingston.

One hundred and twenty-seven complaints, or eight per cent of the Commission's total, were received in this region during fiscal year 1984/85. Handicap and sex were the most frequently cited grounds in complaints under the Code, with 33 per cent and 25 per cent of cases, respectively.

Because Ottawa is the capital of Canada, many professional associations and accreditation organizations have established their head offices in the city. Therefore, issues relating to the licensing and certification of professionals are frequently brought to the Eastern Region.

At issue are the requirements for licensing or certification of professionals who received their training abroad. In many instances, professional organizations require foreign-trained professionals seemingly to meet more stringent criteria than applicants who received their training in Canada.

In past years, the Commission has received a number of complaints from professionals who allege that the apparently differential licensing requirements have an adverse impact on the basis of place of origin, in that the place of origin is frequently the same as the country of training. Therefore, the standards established by professional organizations may result in the exclusion of foreign-born professionals.

These complaints are currently being examined under sections 4, 5 and 10 of the Code. A *prima facie* case of discrimination is established if it can be shown that the requirements in question have a discriminatory effect. If this is the case, the respondent organization must demonstrate that the requirement is nonetheless reasonable and *bona fide* in the circumstances. These complaints are currently under review by the Commission.

The region's programs in public education, consultations and race relations were particularly active during the fiscal year. Outreach initiatives have encouraged community and social workers to take a more active role in assisting their clients to file and pursue complaints under the Code, particularly complaints alleging physical or mental handicap.

As more employers and institutions are incorporating equal opportunity employment policies and affirmative action programs, the Commission's staff is requested more and more frequently to review application forms, deliver information sessions, provide educational seminars, consult with personnel managers and advise community groups on the provisions of the Code.

Northern Region

This region is headquartered in Sudbury, and has four district offices in Kenora, Thunder Bay, Sault Ste. Marie and Timmins.

The Northern Region constitutes 85 per cent of the province's geographical area, and ten per cent of its population. For this reason, the regional staff, as well as Commissioners, have continued to expand the region's outreach program to those communities that do not have immediate access to the services provided by the region's five district offices. As well, toll-free telephone numbers have been provided for all residents of northern Ontario.

Members of the staff hold frequent consultations and educational undertakings with Native organizations and communities, and the Commission's brochures detailing information about complaint procedures and the provisions of the Code have been translated into Cree and Ojibway.

The Commission continues to consult with law enforcement, social services and health care delivery agencies serving Natives in order to improve communication between these agencies and Native communities. The primary objective of these initiatives is to increase the understanding of the social, cultural and economic environment of Native persons among agency representatives so that they can better respond to the needs of the persons and groups whom they serve.

The region saw an increase of 36 per cent in the number of complaints received during the fiscal year, with the majority alleging discrimination in employment because of handicap. This increase may be attributable to the heightened awareness of the public with respect to their rights under the Code, and to a decrease in employment opportunities within the resource-based economy that predominates in northern Ontario.

The staff have also conducted public education programs for the business community in all aspects of the recruitment, hiring and employment process. Several branches of the Chamber of Commerce have sponsored seminars on equal opportunity, and invited the regional staff to participate in these sessions. The staff also conducted joint seminars with the Federal Business Development Bank, in the areas of recruitment and selection, during the fiscal year.

As part of the region's working relationship with law enforcement agencies, the staff assisted the Ontario Provincial Police detachments in Sault Ste. Marie, Thunder Bay and Kenora in delivering their in-service training programs in human rights and police-minority relations.

Southwestern Ontario Region

Fiscal year 1984/85 saw major changes for the Southwestern Region. At the beginning of the year, the region was the second largest in the province in terms of caseload: 186 cases were in process, which increased by 59 per cent to 295 at the end of December 1984.

Halfway through the fiscal year, the Southwestern Region was divided into two regions to better cope with this dramatic increase in caseload. The regional boundaries now extend from Simcoe northward to Brantford, Cambridge, Guelph and Owen Sound. The region is headquartered in London and has district offices in Kitchener and Windsor. Despite the changes and the increasing caseload, service delivery in the region was improved as the Southwestern staff established a more regular presence in the Brantford and Sarnia areas, where an increasing number of human rights issues have been brought to the Commission.

The Southwestern Region, together with Hamilton-Niagara, received 398 cases or 25 per cent of the total cases received by the Commission in 1984/85, the highest percentage of all regions.

The grounds most frequently cited in complaints were handicap, with 23 per cent of the total; race, with 19 per cent; sex, with 16 per cent; sexual harassment and age, with 11 per cent each, and the other grounds with lesser yet significant numbers.

In November 1984, the Commissioners held a Community Consultation in London with a broad cross-section of interested members of communities from across the region. The meeting was attended by representatives of community organizations, agencies, unions, educators and representatives of business and industry, and these efforts resulted in a large and enthusiastic group of participants. The result was a lively dialogue and a fruitful exchange of ideas about the Commission's role and future direction.

Improving employment opportunities and the working environment for women through affirmative action was the focus of much of the region's work this year. In Windsor, for example, considerable time was spent consulting with the local Board of Education and the City, encouraging these institutions to increase the effectiveness of their affirmative action program. One case settlement with a major auto parts manufacturer included a special program for women which provided for modifications to the company's application, recruitment and medical screening procedures. This resulted in the hiring of several women who had previously been considered physically unsuitable for such positions. Windsor was also the venue of a board of inquiry against a major hospital (Windsor Western) which was alleged to have maintained separate male-female job classifications for housekeeping positions. This hearing had not concluded at the time of writing this report.

The increase in complaints alleging discrimination in employment was mainly attributed to the recession, which caused companies to reduce the size of their work forces through layoffs and restricted recruiting. However, the Commission discovered in the course of investigations that many complaints based on race and sex were the result of insensitivity on the employer's part or misunderstanding on the complainant's part regarding job elimination or layoff. Some complaints were generated by inaccuracies or a lack of clarity in letters notifying employees of layoff. On the other hand, many complaints alleging age discrimination were found to be substantiated in that employers had intentionally used age as a criterion for downsizing, with a significant negative impact on older workers. The Commission settled many of these complaints with monetary compensation and job restoration as remedies for these situations.

In the area of goods, services, and facilities, a successful board of inquiry was held against the Anchor & Wheel Inn on Pelee Island. Two black women who had been refused use of the Inn's dining facilities were awarded \$300 each in damages. This figure represented a substantial increase in the amount of financial compensation traditionally awarded in such cases. As well, the owner of the Inn was ordered to

comply with the Code in future and to place newspaper advertisements indicating that his policies are non-discriminatory.

Major public education initiatives on the provisions of the Code this year included a two and one-half day seminar with 160 administrators from the London Board of Education, a series of seminars for all employees at Johnson and Johnson in Guelph and professional development for secondary school teachers in Haldimand-Norfolk County. Consultation continued with major employers, educational institutions and unions to develop policies on equal employment opportunity, sexual harassment and race relations.

The Commission's staff also addressed the International Organization of Personnel in Security, the Farm Safety Association, the Stratford Personnel Association and the Certified Public Accountants Association as well as many professional meetings, secondary and post-secondary classes, unions and social agencies.

Hamilton-Niagara Region

This newest region was created in November, 1984, with its headquarters in Hamilton. It covers the Golden Horseshoe and Greater Hamilton areas, and has a district office in St. Catharines. The total number of cases in process at March 31, 1985 was 174.

The caseload has been steadily increasing in the Hamilton and Niagara areas over the past several years. Although the predominant grounds of discrimination are race or colour and sex, including sexual harassment, the region has seen a significant number of complaints alleging discrimination in accommodation on the ground of marital status.

The region has dealt with a number of complaints in which the outcome has had broad implications for members of minority communities. In November, 1984 seven East Indian taxi drivers alleged that their employer discriminated against them in accordance with a company policy to abide by customer requests not to send an East Indian driver. The Commission initiated complaints against two additional companies alleging that they make racially selective assignments of drivers upon receiving discriminatory requests. Conciliation negotiations in these complaints were under way at the time of writing this report.

Regional staff in Hamilton and St. Catharines have established new contacts with employers, business, industry, educational institutions, labour organizations and community groups. Several public educational projects were conducted during the year, involving a number of major industrial corporations such as Texaco Refinery and WABCO.

EXAMPLES OF
COMPLAINTS OF DISCRIMINATION

1984 / 85

EMPLOYMENT

Race, Colour, Nationality, Ancestry, Place of Origin, Ethnic Origin

The complainant, who is of East Indian origin, alleged that her supervisor required her to serve a probationary period two months longer than the customary period, did not provide adequate orientation and training, and eventually dismissed her without explanation or warning. She further alleged that four of her co-workers made racially derogatory comments and insults in her presence, and that her supervisor and the director of personnel took no corrective action when these comments were brought to their attention.

Her complaint alleged denial of the right to equal treatment with respect to employment without discrimination because of race, colour and ethnic origin. She also alleged denial of the right to freedom from racial harassment in the workplace.

A co-worker also filed a complaint alleging that she was disciplined, and later dismissed, because she had befriended the complainant and supported her when she informed management of the offensive remarks. This complainant alleged discrimination because of a relationship with a person identified by a prohibited ground of discrimination.

During an extended investigation of these complaints, it was established that the work performance of both complainants had been assessed as competent. Interviews with employees in the complainants' department indicated a tendency for co-workers to avoid communicating with the two women. Two witnesses stated that they had heard co-workers making racially derogatory comments. One of them, who is of a mixed racial background, said that because she "does not look black", co-workers often make racially offensive remarks in her presence. The second complainant informed the Commission that she had been instructed not to seek assistance or information from the first complainant, and several co-workers stated that this was common knowledge among employees.

These facts supported the allegations of the complainants.

In conciliation, the parties agreed to the following terms of settlement:

- Both complainants had obtained suitable employment elsewhere, and therefore did not request reinstatement. The respondent compensated the first complainant in the amount of \$3,000 for earnings lost because of discrimination and for insult to her dignity. The second complainant received \$1,200 in compensation for earnings lost and damages for mental anguish,

- both complainants were provided with letters of apology and written references.

The complainant, a black woman originally from Trinidad, had worked as a part-time nurse's aide in the respondent hospital for one year. She alleged that her supervisor reduced her hours after informing her that one of the white nurses had reported that her work performance was unsatisfactory. Her complaint also stated that the nurse in question had made derogatory remarks about Blacks in her presence.

The complaint alleged denial of the right to equal treatment with respect to employment without discrimination because of race, colour, place of origin, ethnic origin and ancestry.

During the investigation, the Commission examined personnel records which indicated that the complainant had had favourable performance appraisals. Records also showed that the complainant's hours were reduced more than those of other employees, including ones with less seniority. Other black nurse's aides were interviewed, and they stated that they had been aware that the white nurse had made racially offensive remarks. They believed that she held prejudiced attitudes towards blacks. An analysis of the racial composition of the workforce revealed that the registered nurses were primarily white, and the nurse's aides predominantly black. All of these factors supported the allegations.

In conciliation, the parties agreed to the following terms of settlement:

- All part-time nurse's aides will be treated the same with respect to shift scheduling and the number of shifts assigned per week;
- the white nurse received a letter of reprimand concerning the derogatory remarks, and a warning from the hospital administrator;
- the complainant was compensated in the amount of \$700 for lost earnings due to the reduced hours and \$500 as damages for insult to her dignity;
- the respondent sent letters to the complainant and Commission, assuring them of its non-discriminatory policies.

The complainant, a man of East Indian origin who was a dishwasher in a large hotel, alleged that he had been subjected to discriminatory terms and conditions of employment in having his hours reduced and in later being laid off while other employees with less seniority were kept on. His complaint alleged denial of the right to equal treatment with respect to employment without discrimination because of race, colour, ethnic origin, ancestry and place of origin.

The respondent, upon receipt of the complaint, requested the Commission to refuse to deal with it under section 33 of the Code. Under this section, the Commission may decide not to deal with a complaint if it is not within its jurisdiction; is trivial, frivolous, vexatious or made in bad faith; the facts on which the complaint is based occurred more than six months before the complaint was filed; or there is a procedure under another Act which is more appropriate in the circumstances.

Following a review of the complaint and the respondent's submission, the Commission decided to refuse to deal with the complaint. Both parties were provided with the following reasons in writing:

- The matters complained of may be remedied through the grievance procedure provided under the collective agreement between the employer and union;
- the complaint contained several inaccuracies. The layoff notice had been given to the complainant in error, and he had, in fact, not been laid off at any time. The reduction in the complainant's hours was due to a decline in business, and no employee with less seniority was assigned more hours than the complainant. The Commission was of the view, therefore, that the complaint was frivolous, vexatious and made in bad faith.

The complainant, a male of East Indian origin, alleged that he had applied for a position with the respondent company, in reply to a newspaper advertisement. He was interviewed the following day; however, the personnel manager did not seem interested in his previous related experience or in how long he had worked for his former employer. Several days later, he learned that the company had hired several new employees and was still advertising. When he then inquired about available positions, he was told that all new employees had the required experience. However, the complainant alleged that a friend at the company had informed him that the recruits were receiving training in their new posts.

The complaint alleged denial of the right to equal treatment with respect to employment without discrimination because of race, colour, ethnic origin and place of origin.

During the fact finding conference, the respondent supplied company records indicating that 41 new employees were hired during the time in which the complainant had applied. There were no members of visible minorities among them, or among the company's workforce of 150. The respondent explained that the number of visible minorities in the community was very small.

During conciliation discussions, the respondent agreed to hire the complainant in the position for which he applied within the next two-month period.

The complainant, a black Canadian, alleged that he was treated differently from other workers following his employment as a security officer for a large manufacturing company. His complaint alleged that he was given less training than other officers, was harassed by his co-workers and supervisor, and eventually dismissed because of race and colour.

During the investigation, supervisory employees stated that the complainant had been released because of negligence in carrying out his duties. Records revealed several reports that the complainant had not followed the company's security procedures. Personnel documentation also revealed that he had received more training than other new employees, in that he had been placed on a refresher course shortly after completing basic orientation and training. Interviews with his co-workers indicated that the complainant was unwilling to accept constructive advice, and his work performance did not improve over the four-month period of his employment. These factors indicated that the allegations could not be supported.

The case was dismissed by the Commission for the following reasons:

- The evidence indicated that the complainant's employment was terminated because of his negligence in the execution of his duties and his lack of understanding of the security aspects of his job,
- members of visible minorities who were interviewed stated that they had not received discriminatory or unfair treatment with respect to orientation or training. The complainant participated in the training program as well as on-the-job and refresher courses during his employment,
- there was no evidence to indicate that the complainant was subjected to differential treatment on the basis of race or colour.

The complainant, a woman originally from Korea, began her employment in the respondent manufacturing plant in 1969. She alleged that she had attempted for several years to transfer to lighter jobs in the company and that her seniority entitled her to train for such openings. She stated that other female employees in the same position with less seniority received training and promotional opportunities which she was denied. Following an injury sustained while at work, the complainant asked for light work on a job rotation or transfer basis, but was refused.

Her complaint alleged denial of the right to equal treatment with respect to employment without discrimination because of race, colour, ancestry, place or origin and ethnic origin.

During the investigation, the Commission examined personnel records, which established that the complainant was treated differently in the terms and conditions of her employment, particularly in the area of job assignment.

The evidence indicated that the complainant was the second most senior employee in her category, and several employees with less seniority had received easier and less monotonous work assignments. Company records showed that her work performance had been very good. The investigation substantiated the allegations.

In conciliation, the parties agreed to the following terms of settlement:

- The respondent would regularly post a schedule of job assignments in the complainant's category. The schedule would be reviewed every six months to ensure that each employee, including the complainant, receives an equal amount of light work,
- the respondent would provide the Commission with written assurances of its non-discriminatory policies.

A man of Polish origin alleged that he had begun his employment as a draftsman with the company in 1976. His complaint alleged that he had enjoyed an excellent working relationship with his superiors during the first four years of his service. However, a merger then took place and a new supervisor was assigned to the complainant's department. The complainant stated that many of his previous duties and assignments were removed and given to co-workers, and he was given duties usually performed by junior drafters. He was given no explanation for these events. Four members of the complainant's department were laid off, and each was of Eastern European origin.

The complainant alleged that his supervisor eventually terminated his services, on the ground that he was not satisfied with his work performance. The complaint alleged denial of the right to equal treatment with respect to employment without discrimination because of ethnic origin, ancestry and place of origin.

During the investigation, the Commission interviewed members of management and the complainant's co-workers, most of whom stated that he had been an able and competent employee. Witnesses also confirmed that the new supervisor was prejudiced towards persons of Eastern European origin. The evidence therefore supported the allegations of discrimination.

During conciliation, the complainant stated that he did not wish to return to the company because he had found a suitable position elsewhere. The parties therefore agreed that the respondent would compensate the complainant in the amount of \$5,500 in compensation for earnings lost because of discrimination.

Sex, Sexual Harassment

The 18 female complainants had been employed as factory workers in the respondent company. The plant closed, and they alleged that they had been told that all employees would be considered for employment in another plant owned by the respondent. Shortly thereafter, the complainants were informed that the available positions were not suitable for women, and they learned that these jobs were filled by male employees with less seniority. Their complaints alleged denial of the right to equal treatment with respect to employment without discrimination on the basis of sex.

During the investigation, a representative of the respondent stated that although all employees were informed about the company's policy to give preference to current employees, female employees were not considered because of the heavy nature of the work at the other plant. Moreover, the respondent stated that the complainants, as well as several male employees who were not transferred, did not meet the company's standards regarding attendance and work record.

An examination of company records revealed that a number of males who were transferred had poorer attendance and work performance records than several of the female complainants. In addition, union representatives claimed that senior company officials had voiced a preference for males in the other plant. At the time of the investigation, one woman was performing the job in question and she informed the Commission that she could perform all of the required duties except for one minor aspect of the job involving heavy lifting.

The evidence lent support to the complainants' allegations.

These factors were discussed during conciliation negotiations, and the parties agreed to settle the complaints as follows:

- Each complainant received monetary compensation in the amount of \$2,000 for earnings lost because of discrimination and insult to their dignity,
- the complainants were offered positions in the other plant and three women accepted them,
- the respondent amended its recruitment and screening procedures to eliminate selection based solely on the ground of sex. Also, the company's medical examination was altered to exclude questions not based upon ability to perform the duties of the position, and
- the respondent agreed to establish an affirmative action program to increase the employment of women. The special program included the following elements,
 - the company agreed to accept referrals from Canada Manpower Centres, local educational institutions and women's organizations,

- preference is given to female applicants whose qualifications are similar to those of male applicants,
- human rights seminars were arranged for management employees,
- the company will report twice yearly, for two years, to the Commission on the numbers of males and females who apply, are interviewed, and hired for general labouring positions.

The complainant had begun her employment as administrative assistant to the respondent in 1982. She alleged that her employer had frequently put his arm around her shoulders or waist, and she had repeatedly told him that these gestures made her uncomfortable. Shortly before she filed her complaint, her employer asked her to accompany him on a business trip. She alleged that he made sexual advances during the overnight stay, despite her objections. She then resigned from the company.

Her complaint alleged that her employer had subjected her to sexual solicitations and advances, and that he knew this conduct was unwelcome.

During the fact finding conference, the respondent admitted touching the complainant during her employment, but stated that he intended only to show his appreciation of her work performance. He did not deny making sexual advances towards her, but claimed that she had overreacted to these advances.

During conciliation discussions, the parties agreed to the following terms of settlement:

- The complainant received compensation in the amount of \$2,500 for earnings lost due to discrimination and \$800 for insult to her dignity,
- the respondent provided her with a letter of reference,
- the respondent issued a directive to all employees, notifying them of the company's policy prohibiting sexual harassment,
- posters outlining the provisions of the Code were displayed on company premises.

The two female complainants had been employed as trainees in the accounting department of a large retail store for two months. They alleged that the manager had stated during the interview that he wanted a woman for the job, and that the training period would involve irregular hours. They also claimed that he made verbal and physical sexual advances towards them during training, which was held in the evening and on an individual basis. They were dismissed shortly thereafter, and were informed that this was due to a shortage of work. Their complaints alleged that they were subjected to sexual advances despite the fact that the manager knew they were unwelcome, and were dismissed for objecting to these advances.

During the investigation, the Commission interviewed several female co-workers and a number of women who had formerly worked for the individual respondent. Most of them stated that they, too, had been required to obtain training after hours and had been subjected to sexual advances. Two co-workers informed the Commission that the complainants had told them about the harassment. The company's personnel manager indicated that the individual respondent hires only women, and that there was a rapid turnover among his employees.

The findings of the investigation supported the allegations. Moreover, two senior managers confirmed that the two women had complained to them about their supervisor's conduct.

During conciliation, the company agreed to compensate each complainant in the amount of \$1,000 for insult to their dignity. Both had found suitable employment upon leaving the company, and therefore did not seek compensation for lost earnings. In addition, the corporate respondent agreed to circulate a written policy regarding sexual harassment, including sanctions against employees who violate the policy.

The complainant had been employed as a purchasing agent for a large hospital for two years. She alleged that she applied for the position of director of purchasing, and was refused this promotion because of her sex.

The investigation disclosed that although both the complainant and the successful candidate had relatively equivalent experience in stock-taking and ordering supplies, the man who was placed in the position had been trained as a business analyst and had more experience than the complainant in dealing with individuals at all levels of a large organization. In addition, the evidence showed that the complainant lacked initiative in carrying out her duties, and did not know the sources or price comparisons of the supplies for which she was responsible.

The overall evidence did not substantiate the allegations. The complaint was dismissed by the Commission for the following reasons:

- The complainant's work record and her lack of professional experience, relative to those of the successful candidate, were factors in the employer's decision not to promote her to the position;

- of the nine directors at the hospital, six were women. Women occupied other senior-level positions throughout the hospital, indicating that hirings and promotions are carried out without regard to sex.

Handicap

The complainant, a man who had epilepsy, worked as a cleaner for a large manufacturing firm. He alleged that he suffered a seizure while at work and was briefly admitted to hospital. When he returned to work, he was informed that his services were being terminated for the reason that his condition made it unsafe for him to climb ladders, which was a necessary part of his duties. The complainant alleged that he explained to his supervisor that he would remain free of seizures if he took his medication regularly and that his seizure had caused no injury to himself or others.

During the fact finding conference, the complainant provided several letters of reference stating that his work performance had always been good. The respondent agreed that the man was an able and competent employee. Following a discussion concerning the complainant's responsibility to take his medication regularly, the parties agreed to the following settlement:

- The complainant was reinstated to his position,
- the respondent compensated the complainant in the amount of \$1,200 representing earnings lost following his dismissal,
- the respondent agreed to write a letter of apology to the complainant, and a letter of assurance of its policy of non-discrimination to the Commission.

The complainant alleged that he had applied for a position with a financial institution, and was informed that he would have to undergo a medical examination by the company physician. He was then told that he was not suitable for employment because the examination had disclosed a back ailment. He filed a complaint with the Commission alleging denial of the right to equal treatment with respect to employment without discrimination because of handicap.

During the fact finding conference, the complainant explained that he had had no problems with his back in several years. He requested the opportunity to be examined by an independent physician. The employer agreed that the complainant was qualified for the position in question.

The parties agreed that if the independent medical examination revealed no health problems that would interfere with the complainant's ability to perform the essential

duties of the employment, the employer would offer him the job. In addition, the respondent agreed to amend its recruitment and employment practices to ensure that no questions about health record or handicap would appear on the application form, and that the company medical would be related to ability to perform the job.

The complainant was examined, and passed the medical. He immediately began working for the respondent, and the case was closed as settled.

A man who had sustained a spinal injury alleged that his employer had changed the duties of his position as a labourer while he was recovering from the injury, and that the employer dismissed him because he was considered to be medically unfit to perform in the newly defined job. The complaint alleged denial of the right to equal treatment with respect to employment without discrimination because of handicap.

The investigation revealed that the respondent was obliged to change its organizational structure and operations during the six-month period that the complainant was absent from work, because of economic decline and a change of customer requirements. The company's new operations required more employees in manual labour, and there were no positions involving light work to which the complainant could be transferred. An independent medical examination revealed that the complainant's handicap rendered him unable to perform the new duties of the position. The Commission observed several employees during the work day and found that 90 per cent of the working hours involve repeated bending, heavy lifting and pushing heavy objects.

The evidence gathered did not substantiate the allegations. The case was dismissed by the Commission for the following reasons:

- The evidence indicated that the duties of the complainant's former position had been changed during his absence, to the point where the duties involve manual labour. The classification of the position had been changed to reflect these changes following negotiations with the union,
- the medical evidence indicated that the complainant was not capable of performing the essential duties of the position.

The complainant, a 56-year-old man, had worked as a sales representative with the respondent for 14 years. He alleged that his employer informed him that he was "putting him on retirement" because the company was in economic decline and the complainant was closer to retirement age than other sales representatives. His complaint alleged denial of the right to equal treatment with respect to employment without discrimination because of age.

During the investigation, members of management did not dispute that age had been a factor in the decision to release the complainant, but they stated that the

complainant's sales volume was not as high as some of the employees who were retained. An examination of company records revealed, however, that the complainant's sales were improving and were better than average at the time of his layoff.

In addition, the comptroller of the company stated that he had suggested transferring several employees to other departments, a move which would have avoided the necessity of dismissals, but his recommendation was rejected.

The weight of the evidence supported the complainant's allegations. In conciliation, the parties agreed to the following settlement:

- The respondent would compensate the complainant in the amount of \$6,000 representing earnings lost as a result of discrimination and damages for insult to his dignity,
- the respondent would display posters outlining the provisions of the Code on the company's premises.

Creed

The complainant, who became a member of the World Wide Church of God several years after beginning his employment, alleged that the employer refused to accommodate his religious beliefs by allowing him time off to observe the sabbath. It is a requirement of the faith that members abstain from work from sunset on Friday to sunset on Saturday. In his complaint, he stated that the employer informed him that he would be dismissed if he failed to report for his Friday evening shift. The complaint alleged discrimination in employment because of creed and alleged that the employer's requirement, while neutral on its face, had an adverse effect on members of faiths whose beliefs prohibit them from meeting that requirement.

During the investigation, company officials maintained that they had not intended to violate the complainant's religious rights. However, the Commission explained that under section 10 of the Code, an employer need not intend to exclude adherents of a particular faith for discrimination to occur. Employment policies and practices that apply to all employees equally but have the effect of excluding members of a religious faith are prohibited unless the practices are reasonably necessary to the employer's business operations.

The Commission learned that several day shift positions were coming available in the plant. The complainant was advised to approach his union representative and request that the union executive waive the posting requirements so that the complainant could be assured of one of these positions.

Conciliation discussions resulted in the following terms of settlement:

- It was agreed that if the union did not waive the postings, the complainant would bid on the job. If this failed, further conciliation would be pursued,

- both parties agreed that the complainant would use part of his vacation leave to observe special holy days,
- the complainant agreed to provide his employer with a list of obligatory holy days in advance, to ensure adequate planning for his absences.

The Commission subsequently made inquiries and learned that the union had waived the posting. The complainant was placed in a new position on the day shift, where he was not required to work on Saturday. The case was then closed as settled.

The complainant, who is Jewish, alleged that he had been refused permission to leave his shift early in order to observe the religious holy day of Rosh Hashana. His complaint stated that he did not complete his shift, and was dismissed because he had left his place of work without permission. The complaint alleged denial of the right to equal treatment with respect to employment without discrimination because of creed.

The investigation disclosed no evidence that the complainant had requested time off for religious observances. Other Jewish employees stated that they were granted time off for high holy days when they asked for such leave. The complainant had been in the employ of the respondent for four days at the time of the alleged incident, and his supervisor maintained that his work performance and time-keeping had been poor.

The Commission dismissed the case because the evidence gathered did not substantiate the allegations of discrimination on the basis of creed. On the contrary, the evidence indicated that the complainant had not requested time off to observe Rosh Hashana, and left his post unattended in the middle of his shift. In addition, other Jewish employees did not encounter difficulties in obtaining time off for religious observances.

The complainant sought reconsideration of this decision under section 36 of the Code. The Commission reviewed the file, together with the information provided by the parties during the reconsideration process. The Commission reaffirmed its decision not to request the appointment of a board of inquiry, and the following reasons were sent to the parties:

- The evidence indicated that the complainant did not request time off from work in order to observe religious holidays, either at or after the time he was hired. The respondent provided assurances that if the complainant had requested time off for religious observances, reasonable efforts would have been made to accommodate this request;
- during the four-day period of his employment, the complainant was warned about several instances of poor work performance,

- the complainant was not dismissed from his employment. He walked off his job in the middle of his September 7-8 shift, advising the site supervisor that he had resigned. When the company was unsuccessful in efforts to locate him on September 8 and 9, his position was filled;
- other Jewish employees stated that they had not been discriminated against because of their creed, a fact the complainant acknowledged.
- The evidence, therefore, indicated that the complainant was not discriminated against because of creed.

Record of Offences

The complainant had applied for employment as a security guard in a large firm. He alleged that the employment application form included the question of whether the applicant had a criminal record. He informed the employer that he had been convicted of an offence, but had been granted a pardon. He attached a copy of the pardon to the application form. When he later inquired about the status of his application, he was informed that he would not be hired because of his criminal record. His complaint alleged denial of the right to equal treatment with respect to employment without discrimination because of record of offences.

During the fact finding conference, the respondent did not dispute that he preferred to hire persons who had never been convicted of an offence. However, the employer was unable to demonstrate that such a preference was a reasonable and bona fide requirement because of the nature of the employment. The evidence substantiated the allegations.

Because the complainant had found alternative employment, he did not request to be placed in the first available position with the respondent. The parties agreed that the respondent would compensate the complainant in the amount of \$650 representing earnings lost as a result of discrimination, and provide the Commission with assurances of a policy of non-discrimination.

ACCOMMODATION, GOODS, SERVICES AND FACILITIES

Race, Colour, Ethnic Origin, Handicap, Receipt of Public Assistance, Sex, Creed

The two complainants, who were black women, alleged that they had viewed a vacant apartment which had been advertised in the newspaper. They stated that when they arrived at the premises, the landlord told them he could not rent to black persons because he did not consider them to be desirable tenants. In their complaint, which alleged denial of the right to equal treatment with respect to accommodation without discrimination because of race and colour, the women stated that they had been accompanied by a friend who witnessed the comments made by the landlord.

During the fact finding conference, the respondent landlord made several racially derogatory remarks to the complainants. Following a discussion of the facts provided by the parties, the complainants' friend verified that the landlord had expressed racially prejudiced attitudes when he and the women visited the rental accommodation. This and other evidence supported the allegations.

In conciliation, the complainants outlined the out-of-pocket expenses they had incurred as a result of the respondent's actions. These included taxi and bus fares and loss of wages for half a day, as well as the necessity to rent a more expensive apartment.

The following settlement was reached among the parties:

- Compensation to each complainant in the amount of \$750 representing expenses incurred because of discrimination and damages for insult to their dignity,
- a letter of apology to the complainants.

The complainant alleged that she had been threatened with eviction from her apartment because a relative with a mental disorder had entered the apartment building a number of times and caused a disturbance. The complainant was usually unaware of these incidents, because her relative tended to visit the common areas of the building. The woman stated that she advised her landlord to call the police whenever this occurred, but the landlord refused to do so. Her complaint alleged that she had been discriminated against because of her relationship with a person identified by a prohibited ground of discrimination, namely, handicap.

Because the complainant was concerned that she may be evicted before long, the Commission handled the case on a priority basis. Contact was immediately established with the manager of the building and it was explained to her that the complainant was not responsible for the conduct of a relative. The respondent agreed to notify the police that the man in question was barred from the premises, and the eviction notice was withdrawn. The complainant expressed her satisfaction with this outcome and the case was closed as settled.

The complainant, who was in receipt of unemployment insurance benefits, alleged that he was denied rental of an apartment on a three-month sublease. His complaint alleged denial of the right to equal treatment with respect to accommodation without discrimination because of receipt of public assistance.

During the fact finding conference, it was learned that the amount of the complainant's income was more than adequate to meet the monthly rental of \$280 and all other expenses. He had just begun receiving unemployment insurance and was eligible for these benefits for one year at the maximum payments. In addition, the complainant had offered the respondent landlord a money order which would cover two months rental at the time of his application. The evidence supported the allegations.

When conciliation discussions were entered into, the respondent agreed to rent the apartment to the complainant.

The complainant, a 35-year-old male with diabetes, purchased a six-month auto insurance policy from a large insurance company. He explained that he was a controlled diabetic. He alleged that his policy was cancelled two weeks later, with the explanation that the company did not insure persons with diabetes. His complaint alleged discrimination in goods, services and facilities, and contracts, because of handicap.

During the investigation, it was learned that it is common practice in the insurance industry to make distinctions on the basis of certain handicaps. The respondent claimed that an insurance agency could adjust the rate on the basis of age, sex and marital status, but no such rate adjustment had been developed for persons with a handicap. Therefore, the only recourse was to decline those risks that did not fit the underwriting criteria.

In the course of conciliation negotiations, the Commission pointed out that there is a growing trend in the insurance industry to assess clients on an individual basis, rather than to rely upon group characteristics, in determining eligibility with respect to age, sex and marital status. The Commission therefore concluded that the respondent's distinction on the ground of handicap was not based on reasonable grounds because of the nature of the particular handicap and the specific circumstances of the individual complainant.

After a discussion of these factors, the following proposals of settlement were accepted by the parties:

- The respondent agreed to delete the exclusion of persons with physical or mental handicaps in its rating manual,
- the respondent offered to reconsider the complainant's application for insurance coverage,
- the respondent agreed to change its policy on the assessment of applicants with a handicap, and to underwrite a disability on an assessment-of-risk basis, rather than on the basis of group characteristics;
- a memorandum outlining these policy changes was sent to all regional managers, and the procedural manual was amended to reflect the new policies.

The complainant was one of three females enrolled in a technology program at a post-secondary institution. The majority of students were males. She alleged that a male instructor repeatedly made sexual advances towards the female students and that they refused these advances. They also alleged that the instructor was overly

critical of their performance on assignments after they had informed him that his solicitations were unwelcome. She then alleged that officials of the institute took no action when she made them aware of the instructor's conduct. Her complaint alleged that she was denied the right to equal treatment with respect to services and facilities without discrimination because of sex, and that she was subjected to unwelcome sexual solicitations and advances.

The Commission interviewed other female students who were enrolled in courses taught by the instructor in question and they stated that they had been subjected to sexual advances and sexually derogatory remarks. These students were of the opinion that women were treated less favourably than men in course assignments, grades and opportunity to participate in class. The evidence tended to support a case of discrimination on the basis of sex.

In conciliation, the parties agreed to the following terms of settlement:

- The instructor compensated the complainant in the amount of \$1,500 for insult to her dignity,
- the respondent institution has formulated a policy and complaint procedure with respect to sexual harassment and sex discrimination,
- the institution agreed to participate in human rights seminars sponsored by the Commission,
- the institution arranged for the complainant's work assignments to be graded by another instructor, and confirmed that the individual respondent would not be teaching any courses in which the complainant enrolled in future semesters.

DECISIONS OF BOARDS OF INQUIRY

AND THE COURTS

1984 / 85

EMPLOYMENT

Sex, Sexual Harassment, Marital Status, Handicap

Cameron and Nel-Gor Nursing Home, Nelson, Solimano

The complainant had a congenital malformation of the left hand, which resulted in three fingers being shorter than normal. She alleged that she was refused a position as a nurse's aide in the respondent nursing home because of her handicap.

During the hearing, the complainant testified that the assistant administrator of the nursing home had interviewed her and had indicated that there was an excellent chance she would be hired on the basis of her personal qualities and experience. The complainant was given a pre-employment medical examination form to be completed by her physician, who referred to her congenital defect, but stated that it did not diminish her ability to such a degree as to prevent the safe performance of her duties as a nurse's aide.

Testimony revealed that when the nursing home administrator became aware of the complainant's handicap, she told her that she would not be hired because "we could not take a chance on a resident being dropped". It was clear to the board, however, that the complainant had informed the respondent that her previous jobs had required her to grip, lift and carry handicapped children, and she had not had any problems. Testimony also indicated that none of the nursing home officials had asked the complainant to demonstrate her ability to grasp heavy objects in a simulated lifting situation.

An occupational therapist testified that she had performed a job demands/job performance analysis on the complainant and had found that she could perform each task associated with the position in a very competent manner. A plastic surgeon specializing in congenital hand surgery testified that the complainant can compete as a nurse's aide on an equal level with any of her peers.

The board then addressed the question of the onus on the respondent to establish that the complainant is incapable of performing or fulfilling the essential duties or requirements of the job because of handicap. This defence is provided under section 16(1)(b) of the Code. The board stated, "Good faith, or lack of malice or improper motive, is irrelevant to handicap situations. The defence has to be founded upon an objective basis".

The board found that lifting patients is an essential aspect of the nurse's aide job function. "However, it is also my view that it is not apparent to a reasonable observer that Ms. Cameron's handicap renders her incapable of performing the task of lifting in the job of nurse's aide . . . Under the circumstances, the respondent should have put Ms. Cameron to the test of a simulated exercise in lifting a patient". The board concluded that the evidence clearly established that the complainant's handicap will not in any way restrict her in being able to lift nursing home patients.

Having found that discrimination had occurred, the board ordered the following:

- The respondent shall offer in writing to the complainant, employment in the position of nurse's aide at the nursing home, when the position next becomes available due to a vacancy, and the complainant shall have seven days after receipt of such offer of employment to accept the offer;
- the respondents are jointly and severally liable to pay to the complainant the sum of \$1,915 as damages for lost wages, the sum of \$2,000 as general damages, and, as interest in respect of the awards of damages, the sum of \$636;
- the respondent shall cease and desist forthwith in discriminating because of handicap in the hiring of employees.

The respondent is appealing the decision and order in the Supreme Court of Ontario, Divisional Court.

Commodore Business Machines Ltd., DeFilippis and the O.H.R.C., Olarte et al

The Divisional Court of the Supreme Court of Ontario was the first court in Canada to consider whether sexual harassment in the workplace constituted discrimination against women in contravention of human rights legislation in Canada. The case involved the complaints of six female employees of Commodore Business Machines Ltd. The six women filed complaints with the Commission which requested the Minister of Labour to appoint a board of inquiry when efforts to conciliate the complaints had failed.

The board of inquiry found that a foreman at the company had repeatedly made sexual advances towards the women, asked for invitations to their homes and requested that they engage in sexual intercourse. When the women refused his advances, he shouted at them, found fault with their work, and shifted them to heavier duties with the result that four resigned and two were dismissed.

On the basis of these findings, the board concluded that these women had been discriminated against in contravention of the Code. The board accordingly ordered the foreman and his employer, Commodore Business Machines, to pay \$21,812 to the women in compensation for lost wages, mental anguish and interest. The foreman was ordered to stop his sexual harassment of female employees and the company was ordered to do whatever was necessary to ensure that the foreman ceased his conduct.

Since the complaints of the six women were lodged, the Code has been amended and now specifically provides for the right to freedom from sexual harassment. At the time of these complaints, they were filed under a section of the former Code that prohibited discrimination because of sex in terms and conditions of employment. The company and the individual respondent appealed the decision of the board of inquiry to the Supreme Court of Ontario, Divisional Court. The Divisional Court upheld the decision of the board of inquiry.

The Court decided several issues which are of importance in other human cases. Counsel for the appellants had argued that their clients had been denied the legal rights provided by section 11 of the Canadian Charter of Rights and Freedoms. However, section 11 only provides rights upon being charged with an offence and the Court found that a complaint under the Code is not charging a person with an offence. Therefore section 11 had no application.

The question as to the manner in which the chairman of the board of inquiry was appointed was also raised and the court concluded that any reasonable and right-minded person would not have any apprehension of bias. There was no evidence which would suggest that there was any bias operating in the appointment of the board chairman.

The important question of similar fact evidence was also considered. The board of inquiry had admitted and relied on the evidence of other female workers at the company that they had been subjected to sexual harassment by the individual respondent. The Divisional Court held that the board chairman had properly admitted and considered this similar fact evidence.

Mark and Porcupine General Hospital, Moyle

The complainant had been hired as a part-time housekeeper by the respondent hospital's maintenance supervisor. Her complaint alleged that several weeks after she began her employment, the senior administrator dismissed her from the position because she was married to another employee who worked in the same department. She was informed that there was a hospital policy whereby spouses could not work together in the same department, a fact of which the maintenance supervisor was unaware. Her complaint alleged discrimination in employment because of marital status.

During the hearing, representatives of the corporate respondent testified that the policy was established to prevent resentment among departmental employees when the spouse of a supervisor receives a promotion or a full-time position. However, the board noted that the evidence indicated that such moves are awarded on a seniority basis. Moreover, in any event, the complainant's husband was acting supervisor and, as such, he did not have the authority to award promotions.

The board then addressed the definition of "marital status", as provided under the Human Rights Code, 1981 and as interpreted by boards of inquiry and the courts.

"Marital status" is defined in the Code as the status of being married, single, widowed, divorced or separated, and includes the status of living with a person of the opposite sex in a conjugal relationship outside marriage.

The board chairman cited a decision of a previous board of inquiry in Ontario which found that discrimination on the basis of marital status is confined to the situation where the denial is simply because the complainant is married. The Code was not deemed to cover discrimination because the complainant is married to a particular person. The chairman disagreed with this interpretation on the grounds that it was unduly narrow.

The board went on to consider whether or not the employer could establish that "marital status" was a bona fide and reasonable qualification due to the nature of the employment in question. The chairman decided that there was no definite and certain concern, such as a potential conflict of interest between the complainant and

her husband, that would justify excluding persons from employment in the maintenance and housekeeping department on the basis of marital status.

Having found that discrimination had occurred, the board ordered the following:

- The respondents are jointly and severally liable to pay to the complainant the sum of \$872 as damages for lost wages, the sum of \$200 as general damages and, as interest, the sum of \$72;
- the corporate respondent shall give notice in writing to the complainant, personally, as to any and all positions of employment (other than positions to which nurses or doctors would be hired) at the hospital as they become available due to vacancies, until the end of 1986 or the employment by the respondent of the complainant, whichever comes first, and shall consider any application for employment submitted by the complainant on its merits and in compliance with the Code.

Robinson and The Company Farm Ltd., Nuttall

The complainant had begun her employment as a tractor operator on a farm in May of 1981. She alleged that she was subjected to sexual advances by her employer, was refused training and a transfer to another position, and ultimately dismissed from her employment because she refused to submit to these advances. The individual respondent is owner and president of The Company Farm Ltd. The complaint alleged discrimination and harassment in employment on the basis of sex.

During the hearing, the complainant testified that the respondent informed her that it would be "in her best interests" to accept his invitation to accompany him to his cottage. When she refused, she claimed that the respondent told her that he might replace her with a man who was interested in the job. Payroll records introduced as evidence indicated that this man assumed the complainant's duties after she was dismissed in early July.

Similar fact evidence of sexual harassment was provided by a woman who had worked for the respondent three years previously. The board of inquiry accepted her evidence and noted that she had never met or discussed the matter with the complainant.

The board found the respondents to be in breach of the Code, and ordered the following:

- The respondents were jointly and severally liable to pay to the complainant the sum of \$600 as damages for lost wages, and the sum of \$750 as general damages;
- the respondent, Wilson Nuttall, shall cease and desist forthwith in the sexual harassment of female employees of the corporate respondent;

- the respondent, The Company Farm Ltd., shall do whatever is necessary to ensure that the respondent, Wilson Nuttall, ceases and desists forthwith in the sexual harassment of its female employees.

Watt and the Regional Municipality of Niagara, Wales

The complainant, who was employed as a member of a road crew, alleged that her supervisor and a foreman had subjected her to terms and conditions of employment that were less favourable than those enjoyed by male employees in the same position. The allegations suggested that the complainant's supervisor was engaged in a course of attempting to provoke her dismissal from her employment, and also referred to insulting or obscene remarks made by the supervisor to the complainant during working hours.

The complaint alleged discrimination in employment on the ground of sex.

The complaint arose against the background of the introduction of women into a traditional area of male employment. Many witnesses testified during the hearing that the road crew was a coarse and rough working environment.

Representatives of the respondent denied the allegations, and testified that the complainant was not a very satisfactory employee, and her supervisor was a stern disciplinarian who established high performance standards for all of his employees.

Counsel for the complainant and Commission advanced the position that some of the supervisor's alleged conduct constituted sexual harassment. The board chairman, therefore, drew upon case precedents in an effort to determine whether an abusive work environment can be construed as sexual harassment. It was the board's view that for such a complaint to succeed, the work environment must be characterized by frequent incidents of offensive conduct, directed only at the female employees.

The board chairman found, on the basis of the evidence, that many of the alleged incidents were not seriously offensive when placed in context, and the cumulative effect of the incidents did not impose a discriminatory condition of work within the meaning of the Code. The evidence indicated that the complainant's work performance remained below standard despite progressive discipline, and the board concluded that, "The totality of the evidence concerning the complainant's work performance indicated that she was resentful of authority in a general way, but particularly resentful of the supervision of Mr. Wales". The testimony also revealed that the only other female member of the road crew had a cordial work relationship with the supervisor; she offered no evidence of verbal or other harassment against her.

The evidence also indicated, in the opinion of the board, that the supervisor's conduct had not encouraged the creation of a work environment in which the complainant's co-workers subjected her to harassment. The work relationships among the employees were satisfactory and the co-workers had positive attitudes towards the complainant's work.

Since the allegations were not substantiated by the evidence, the complaint was dismissed.

Race, Colour, Ancestry, Place of Origin, Ethnic Origin, Citizenship

Barnard and the Canadian Corps of Commissionaires (Toronto and Region)

At the time of the complaint, Mr. Barnard was a permanent resident, but not yet a citizen of Canada. Of East Indian origin, he had served with distinction in the Indian Army during World War II. He alleged that the Canadian Corps of Commissionaires had refused his application because he was not a Canadian citizen. The complaint, which was filed under the former Human Rights Code, alleged discrimination in employment because of nationality, which was interpreted to include citizenship. (The new Code includes citizenship among the prohibited grounds of discrimination).

Testimony introduced at the hearing indicated that the qualifications for membership in the Corps include a requirement that an applicant be a Canadian citizen or a British subject. The complainant had ceased to be a British subject when India gained her independence.

Counsel for the Corps argued that the relationship between a Commissionaire and the Corps is not one of employment, but rather membership in a club. However, because the Corps was founded in part to assist retired military personnel to find useful work in the civilian world, and because Commissionaires are paid by the Corps to perform a security function, the board concluded that the relationship between an applicant and the Corps is in essence one of employment, and is therefore covered by the Code.

The board also found that the employment exception provided under the Code for "exclusively fraternal or social organizations" did not apply in this case, since the Corps provides employment for its members.

The chairman of the inquiry also held that citizenship is not a bona fide occupational qualification or requirement for the position of Commissionaire, stating, "Citizenship does not assure the Corps that the applicant is knowledgeable about the institutions where he will be working, or that he is honest or loyal or industrious or not a security risk".

Having found that discrimination had occurred, the board ordered that the Corps compensate the complainant in the amount of \$1,000 for earnings lost due to discrimination and \$500 in damages for insult to his dignity. The respondent was also ordered to consider as soon as is reasonably possible any renewal of the complainant's application for membership in the Corps.

The respondent is appealing the decision and order in the Supreme Court of Ontario, Divisional Court.

Blake and The Mimico Correctional Institute, Ministry of Correctional Services

The complainant, a 50-year-old black female originally from Jamaica, made two applications in response to advertisements for the position of correctional officer with the respondent Institute during 1977. She alleged that her applications were rejected because of race, colour, sex and age.

Shortly after filing a complaint of discrimination with the Commission, the complainant again applied for a position with the Institute. She was called in for an interview and was later informed that her application had been unsuccessful.

In its investigation of the complaint, the Commission reviewed all applications for the position in question that had been received over the one-year period during which the complainant had applied.

The board chairman provided a detailed analysis of the evidentiary value of statistical evidence in complaints of discrimination, and noted that, "In the case at hand, statistical evidence was sought to be used as the significant component of the evidence in seeking to prove discrimination, and in this respect the case would seem unique to Canada".

The board pointed out that statistics indicate patterns of conduct rather than specific occurrences, thus representing a form of circumstantial evidence from which inferences of discriminatory conduct may be drawn. Statistical evidence may be useful in complaints involving a requirement that is neutral on its face but has a disparate impact on a particular group. Because discrimination is often covert, a board of inquiry or court should be sensitive to obvious inferences that may be gleaned from statistics. At the same time, statistical evidence must be linked to the specific incidents alleged.

Because the complainant had alleged that she was refused employment for discriminatory reasons, the Commission sought to determine and evaluate the reasons for the rejection and acceptance of applicants for the position of correctional officer with the respondent over the period from June, 1977 to May, 1978. The method of statistical analysis used was the "applicant flow analysis", which attempted to show a disparity between the percentage of women among those who applied for the position and the percentage of women among those hired for the position. Similar comparisons were made on the basis of national origin and age.

The results of the analysis indicated that the probability of being invited for an interview significantly declined if the applicant was not of European origin and was female.

It was the opinion of the board that a *prima facie* case of discrimination because of sex had been made out by the statistical evidence, at least for the time period in question. The board chairman stated that discrimination because of sex was endemic to the recruitment system at Mimico until a new superintendent was appointed. The board heard evidence that a systematic central recruitment process was instituted in 1981, and that it is now the intent to increase the employment of females in positions throughout the Ministry of Correctional Services.

However, the board found that when all of the evidence was considered, the complainant was not personally discriminated against because she was a woman, or on any other prohibited ground under the Code.

For this reason, the complaint was dismissed.

Fu and the Ontario Government Protection Service, Gordon

The complainant, a man of Chinese origin, alleged discrimination and harassment in the course of his employment as a security officer, because of race, colour and place of origin.

Mr. Fu's complaint alleged that his supervisor, Mr. Gordon, had singled him out for differential and harassing treatment. His testimony before the board focussed mainly upon two alleged incidents occurring in May of 1983, following which he was transferred to another post within the service.

The board found, on the basis of the evidence before it, that the actions taken with respect to the complainant had not been motivated by his race, colour or place of origin. The chairman observed, however, that "Management, and particularly Mr. Gordon, could have done a better job in their dealings with their subordinates, particularly Mr. Fu. However, I find on the evidence that his shortcomings as a manager towards Mr. Fu and the witnesses on his behalf were not due to a racist motivation, and he was not in infringement of the Code in respect of the complainant."

At the hearing, testimony was introduced that Mr. Gordon had made disparaging remarks about visible minorities. The totality of the evidence indicated to the board, however, that although Mr. Gordon had used racial jokes and slurs, he had never made a racial joke or slur directly to Mr. Fu or any other non-white employee. Moreover, the racial comments were not connected with the alleged unequal treatment, in the view of the board.

In explaining the application of the Code to allegations of racial harassment, the board noted that section 4(2) of the Code provides that:

"Every person who is an employee has a right to freedom from harassment in the workplace by the employer or agent of the employer or by another employee because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, age, record of offences, marital status, family status or handicap."

Section 9(f) defines "harassment" as engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome.

Hence, explained the board, racial jokes, insults, slurs or other "comment" such as false and embarrassing accusations of misbehaviour could amount to "harassment" as defined, and "conduct" would include discriminatory treatment with respect to postings, transfers, hours of work or other working conditions.

Because the board could find no evidence of a pattern of racial harassment or differential conduct toward the complainant or any other non-white security officers, the complaint was dismissed.

Moreover, the board reviewed all of the formal grievances filed by the union on behalf of employees of the respondent over a two-year period, and could ascertain no allegations of racism in any except that of Mr. Fu, which did not overtly raise racism as an issue.

The board observed that the respondents could have done more in the way of effectively communicating with the complainant, particularly regarding the reason for his transfer at the time he was told of it. The board also expressed concern about the evidence of racial jokes and slurs, pointing out that such humour masks a form of racism and can lead to a perception of racist motives when other problems arise in an employment situation.

The board also commented on the demeanour of the complainant and the individual respondent. Having observed Mr. Fu as a witness, the board described him as a morally rigid and self-righteous person who becomes easily fixed in his views and opinions. Mr. Gordon was described as being officious and stubborn in the position he takes, as defensive and argumentative when challenged and aggressive and threatening when he can exercise his authority.

The complainant has filed a notice of appeal from the decision in the Supreme Court of Ontario, Divisional Court.

**Hyman and Southam Murray Printing,
International Brotherhood of Teamsters Local 419**

A board of inquiry was appointed to hear and decide four complaints filed by a black man of Jamaican origin.

Mr. Hyman's first complaint alleged that the management of the company had subjected him to differential terms and conditions of employment, in that the company had failed to intervene when he was harassed by a co-worker, and had unfairly disciplined him on a number of occasions. This complaint alleged that the company's actions were based on discriminatory attitudes towards the complainant, based on his racial and ethnic origin.

The first complaint against the union alleged that union officials had inadequately represented the complainant's interests after disciplinary measures were taken against him by the company.

Subsequent to the Commission's investigation of these complaints, the complainant's employment was terminated. Mr. Hyman then alleged that he was dismissed because he had previously filed a complaint with the Commission against the company. A second complaint against the union alleged that the union did not vigorously pursue the complainant's grievance following his dismissal because he had previously filed a complaint against the union. Both complaints alleged that these acts constituted reprisals against the complainant because he had taken part in a proceeding under the Code.

The board found on the evidence that the respondents' decisions were not motivated by discriminatory attitudes. In addition, the chairman found significant evidence of a good faith attempt on the part of the union to respond effectively to Mr. Hyman's grievances.

The board heard evidence regarding several additional allegations of discriminatory treatment by officials of the company and union. The chairman found that the evidence did not support these allegations, and stated that, "Plausible explanations for the actions in question have been brought forward in evidence by both respondents. Those explanations are unrelated to racial discrimination and they are also unrelated to a suggestion of harassment because of the complainant's earlier complaints".

For this reason, the complaints were dismissed.

Both respondents submitted that the parties should be entitled to an award of costs sustained by them in the board proceedings. The chairman did not award costs, however, because he was not satisfied that the complainant was completely insincere in his belief that he had been unjustly treated by the employer and union because of discriminatory attitudes.

ACCOMMODATION, GOODS, SERVICES, FACILITIES

Race, Colour, Ancestry, Place of Origin, Ethnic Origin

Murray, Landrum and The Anchor and Wheel Inn, Emrich

The complainants, who are black citizens of the United States, had alleged that they and two other black persons registered at the respondent hotel for a weekend visit. They were assigned a room in a building away from the main hotel which had no dining facilities. The members of the party were allegedly told that they could not eat in their room and could not eat in the dining room because other guests might object to the respondent serving meals to black patrons.

It was further alleged that the respondent had refused to allow the party to take a room in the main building. Moreover, the complainants stated that the building to which they were assigned was in a dilapidated state of repair.

The complaint alleged discrimination with respect to accommodation, services or facilities available in any place to which the public is customarily admitted because of race and colour.

The board found clear evidence that the complainants were informed that they and other members of their party would not be permitted to eat in the main dining room because they were black. No other reason was given for their being denied access to the dining room facilities. The board concluded that the respondent had breached section 2 of the former Ontario Human Rights Code.

With respect to the allegation that the party had been denied a room in the main building, the board found no evidence that Mrs. Landrum had ever requested a room in the main portion of the hotel, despite the fact that the respondent had shown them rooms in that building.

Having found a breach of the Code, the board ordered that:

- The respondent pay to each of the complainants the sum of \$300 as compensation for injured feelings,
- the respondent keep posted a placard supplied by the Commission setting out the principles of the Code in a prominent place near the entrance of the Anchor and Wheel Inn,
- the respondent provide a letter of apology to each of the complainants,
- the respondent provide a letter to the Commission undertaking that he will, in future, comply with the Code at the Anchor and Wheel Inn operated by him;
- that the respondent place an advertisement in the following newspapers: The Leamington Post and News, The Windsor Star, and The Detroit Free Press, indicating that, as Resident Manager of the Anchor and Wheel Inn, he will not deny to

any person or class of persons accommodation, services or facilities available at the Inn or discriminate against any person or class of persons with respect to the accommodation, service or facilities available at the Inn because of the race, creed, colour, sex, marital status, nationality, ancestry or place of origin of such person or class of persons or of any other person or class or persons;

- the respondent send the letter of apology, the letter of undertaking and the draft advertisement referred to above to counsel for the Commission.

Tabar, Lee, Lee and West End Construction Ltd., Scott

At the time of the hearing, the corporate respondent owned and managed an apartment building complex which contained a "tuck shop" variety store. Mr. Tabar alleged that he signed a lease with the respondent in 1976 and became proprietor of the variety store. Shortly thereafter, Mr. Tabar decided to sell his tuck shop business. To effectively do so, he had to be able to transfer his interest as tenant, which required the consent of the landlord.

The lease contained a clause allowing the landlord arbitrarily to refuse an assignment or sub-let. Mr. Tabar alleged that West End, through the individual respondent, discriminated against himself and prospective purchasers in the occupancy of a commercial unit on the grounds of race, colour, nationality, ancestry or place of origin. His complaint stated that Mr. Scott, Vice-President of West End, refused to consent to the assignment of the lease to several individuals who were of East Indian or Pakistani origin. The lease was later assigned to a man of Korean origin.

On the issue as to why the individual respondent was not prepared to consider two previous prospective tenants, the board found on the evidence that the respondents did not rent to them because they did not want East Indians as owners/operators of the tuck shop.

In March, 1979, Mr. and Mrs. Lee, who were of Korean origin, alleged that they subsequently bought the business and attempted to sell it two years later. They testified that Mr. Scott had informed them that he did not wish any purchasers of East Indian, West Indian or Pakistani ancestry, and that a prospective purchaser of East Indian origin was refused the lease. The board found, on the basis of the evidence, that the sole reason why this offer was not acceptable was that it was made by a person of East Indian ancestry and racial origin.

Several months after West End refused to sell the business to the East Indian party, the Lees located a prospective buyer, Mr. Manji, also a man of East Indian origin. Mr. Lee testified that he was advised by Mr. Scott that if he wanted this sale to be completed, he should withdraw his complaint with the Commission. The contemplated purchase was not proceeded with at that time and the board stated, "It is clear from the evidence that Mr. Scott was putting pressure upon Mr. Lee after Mr. Scott learned of the complaint, by closing the store and preventing Mr. Lee from selling the business unless he dropped his complaint".

However, Mr. Manji later bypassed Mr. Lee and negotiated directly with Mr. Scott, thereby avoiding the necessity of purchasing the business. Mr. Manji became a tenant of West End and the respondents asserted during their testimony that the tenancy agreement was evidence that they do not discriminate against East Indians.

Nevertheless, it was the view of the board that Mr. Scott's treatment of Mr. Manji did not accord with his real views towards East Indians as possible tuck shop operators. The chairman stated, "I find on the evidence that Mr. Scott, faced with Mr. Lee's complaint and the certain knowledge that Mr. Lee was going to pursue it, quickly adopted, as an expedient opportunity in the circumstances, Mr. Manji as a tenant when Mr. Manji approached him. Mr. Scott saw Mr. Manji as offering a plausible defence to the accusations that were being made against him by Mr. Lee".

The board therefore held that Mr. Scott had breached the Code in rejecting the prospective purchasers of Mr. Tabar and Mr. Lee and in refusing consent to assignments of the lease. The results of this breach, in the view of the board, were considerable financial loss as well as stress and mental anguish.

The board then addressed the fact that the complainants were not the persons directly discriminated against because of their own race, colour, nationality, ancestry or place of origin. The board, however, observed that the complainants suffered significant losses because they could not sell their businesses, given the respondents' refusal to consent to the assignment of the lease. Could they therefore succeed in obtaining compensation under the Code on this basis?

It was the opinion of the board that Mr. Lee's and Mr. Tabar's rights to assign their commercial leasehold interests were restricted by their landlord on a ground prohibited by the Code, placing them in a worse position than other commercial tenants in Ontario. They were therefore personally discriminated against with respect to a term or condition of occupancy of commercial accommodation. The board was also of the view that the Code permitted complaints to be filed on behalf of a "class of persons", without the members of the class being named.

Moreover, the board held that the discriminatory acts of Mr. Scott were done by him as an officer and employee who was part of the directing mind or management of the corporate respondent. Since the acts were done during the course of his employment, they were deemed to be the acts of West End. Hence, the corporate respondent was also in breach of the Code.

Having found discrimination, the board ordered the following:

- The respondents shall cease and desist in unlawful discrimination in respect of the rental and occupancy of commercial units they own or manage,
- the respondents are jointly and severally liable to pay forthwith to the complainants, as follows:

to the complainant, Bahjat Tabar, as damages for the loss arising in respect of the sale of his business, the sum of \$9,000; as general damages, the sum of \$1,000; and as interest, the sum of \$4,326.00;

to the complainants, Chong Man Lee and Kyung S. Lee; as damages for the loss arising in respect of the sale of their business, the sum of \$20,300; and as interest, the sum of \$8,784;

to the complainant, Chong Man Lee, as general damages, the sum of \$3,500; and as interest, the sum of \$1,514.

STATISTICAL TABLES

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TABLE 1 - Complaints Received by Region of Intake and Ground: 1984/85

This table shows the numbers of cases filed in each region, by ground of complaint, and the percentages that each ground represented of the region's total intake of cases. Thus, it provides for a comparison of workloads by region as well as of frequency of Code usage by the protected groups across the province. The geographical boundaries of each region are delineated in the map shown on page 32 and further details are given in the comments under "Regional Activities".

The three Toronto regions combined received 919 cases or 57 per cent of the total intake of cases by the Commission in 1984/85. The Toronto East (Scarborough) region alone received 341 cases or 21 per cent of the total, followed by Toronto Central (Downtown Toronto) with 315 or 20 per cent and Toronto West (Mississauga) with 263 or 16 per cent.

The Southwestern region (including the new Hamilton-Niagara Region) received the largest number of cases of any one separate region, with 398 or 25 per cent of the provincial total. The Northern region received 155 cases or 10 per cent of the total and the Eastern region received 127 cases or 8 per cent.

A comparison of the grounds cited in complaints shows that complaints citing handicap represented the highest percentage of cases received by every region, except Toronto West, followed by race or sex.

Complaints citing race represented 29 per cent of the total intake of cases in Toronto West, 24 per cent in Toronto Central, 19 per cent in the Southwestern and 13 per cent in the Eastern. Sex (gender) complaints accounted for 25 per cent of the Eastern caseload, 21 per cent of the Northern, and 13 per cent of the Toronto Central and West Regions.

Complaints citing the grounds of age and sexual harassment comprised the fourth and fifth highest percentages.

TABLE 2 - (Employment) Complaints Received by Region of Intake and Ground: 1984/85

This table is similar to Table 1 but pertains to complaints in the area of employment only. The trends shown are similar to those reflected in Table 1.

TABLE 1 - Complaints Received by Region of Intake and Ground: 1984/85

Region:	Race/Colour	Ethnic Origin	Creed	Sex	Age	Marital Status		Family Status		Handicaps		Other	Total
						Sexual Harassment	Total	Family	Other	Family	Other		
Eastern	17 (13)	2 (2)	2 (2)	32 (25)	6 (5)	15 (12)	4 (3)	3 (2)	42 (33)	4 (3)	127 (100)		
Northern	14 (9)	3 (2)	4 (3)	33 (21)	14 (9)	14 (9)	10 (6)	4 (3)	56 (36)	3 (2)	155 (100)		
Southwestern	78 (19)	11 (3)	12 (3)	64 (16)	43 (11)	43 (11)	20 (5)	11 (3)	95 (23)	21 (6)	398 (100)		
Toronto Central	77 (24)	17 (5)	21 (7)	41 (13)	15 (5)	30 (10)	13 (4)	7 (2)	89 (28)	5 (2)	315 (100)		
Toronto East	66 (19)	19 (6)	11 (3)	53 (15)	27 (8)	31 (9)	20 (6)	8 (2)	92 (27)	14 (5)	341 (100)		
Toronto West	76 (29)	5 (2)	16 (6)	34 (13)	25 (10)	19 (7)	11 (4)	6 (2)	64 (24)	7 (3)	263 (100)		
Total	328 (21)	57 (4)	66 (4)	257 (16)	130 (8)	152 (10)	78 (5)	39 (2)	438 (27)	54 (3)	1599 (100)		

Ground:

TABLE 2 - (Employment) Complaints Received by Region of Intake and Ground: 1984/85

Eastern	8 (9)	1 (1)	1 (1)	28 (32)	6 (7)	14 (16)	3 (3)	—	27 (31)	—	88 (100)		
Northern	5 (4)	2 (2)	4 (3)	29 (24)	10 (8)	12 (10)	7 (6)	1 (1)	51 (42)	—	121 (100)		
Southwestern	58 (18)	6 (2)	10 (3)	55 (17)	42 (13)	34 (10)	17 (5)	6 (2)	99 (30)	—	327 (100)		
Toronto	178 (25)	31 (4)	42 (6)	110 (15)	67 (9)	65 (9)	21 (3)	11 (2)	191 (27)	3 (-)	719 (100)		
Total	249 (20)	40 (3)	57 (5)	222 (18)	125 (10)	125 (10)	48 (4)	18 (1)	368 (29)	3 (-)	1255 (100)		

* Public Assistance, Record of Offences, Reprisal and Breach of Settlement.

TABLES 3 and 4 - Complaints Received by Ground and Provision, 1984/85 (1983/84)

The number of complaints received increased in 1984/85. A total of 1,599 complaints were filed last year, or 29 per cent more than the total of 1,237 registered in 1983/84.

Complaints on the ground of handicap constituted the highest percentage of the total, at 27 per cent, followed by sex (gender and sexual harassment combined), at 24 per cent, and race at 21 per cent. These three grounds combined comprised 72 per cent of the total number of cases filed.

Increases were registered in all major grounds: 51 per cent in handicap, 47 per cent in sex, 20 per cent in age and 15 per cent in race. Significant increases were seen in the number of complaints citing marital status and creed, at 212 per cent and 78 per cent, respectively.

The employment provisions of the Code were by far the most frequently used, comprising 78 per cent of the total number of cases. There was a shift in 1984/85 between the number of complaints citing the "services" provisions, which dropped from 11 per cent to 9 per cent, and the numbers of complaints citing "accommodation", which increased from 9 per cent to 10 per cent.

TABLE 3 - Complaints Received by Ground and Provision, 1984/85

Ground:		Code Provisions:						Percentage						
		Ethnic Origin	Race/Colour	Sex	Age	Family Status	Marital Status	Handicap	Only in Accommodation (Only in Employment)	Record of Offences	Reprisal/Breach of Settlement	Total		
Services	35	10	7	23	-	10	8	1	50	34	-	144	9	
Accommodation	36	7	1	7	5	17	22	19	15	2	-	163	10	
Contracts	4	-	1	2	-	-	-	1	-	-	-	10	1	
Employment	249	40	57	222	125	125	48	18	368	3	-	1,255	78	
Vocational Associations	4	-	-	3	-	-	-	-	3	-	-	10	1	
Reprisal	-	-	-	-	-	-	-	-	-	-	16	16	1	
Breach of Settlement	-	-	-	-	-	-	-	-	-	-	1	1	-	
Total	328	57	66	257	130	152	78	39	438	34	3	17	1,599	100
Percentage	21	4	4	16	8	10	5	2	27	2	-	1	100	

Extension of Code Provisions Also Cited in Complaints:														
Constructive Discrimination	5	5	15	28	-	5	-	2	9	1	-	-	70	43
Association Discrimination	11	1	-	4	1	1	2	4	4	1	-	1	30	18
Announced Discrimination	-	-	-	-	-	-	-	1	1	1	-	-	2	1
Advertising	-	-	3	2	6	-	2	1	1	2	-	-	17	10
Application Forms	-	-	2	2	7	-	14	15	-	5	-	-	43	26
Employment Agencies	1	1	-	2	-	-	-	-	-	-	-	-	4	2
Employment Plans	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total	17	10	19	47	1	22	18	7	21	3	-	1	166	100

TABLE 4 - Complaints Received by Ground and Provision, 1983/84

Ground:		Code Provisions:										Percentage									
		Sex		Age		Sexual Harassment		Marital Status		Family Status		Handicapped		Public Assistance (Only in Accommodation)		Record of Offences (Only in Employment)		Reprisal/Breach of Settlement		Percentage	
Services	47	9	5	15	-	8	2	9	41	-	-	-	-	-	-	-	-	-	-	136	11
Accommodation	30	8	1	7	8	8	9	18	6	14	-	-	-	-	-	-	-	-	-	109	9
Contracts	2	-	3	4	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	9	1
Employment	204	54	26	149	122	111	14	12	242	6	6	-	-	-	-	-	-	-	-	940	76
Vocational Associations	3	1	2	-	-	-	-	-	1	-	-	-	-	-	-	-	-	-	-	7	-
Reprisal	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	35	3
Breach of Settlement	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	1
Total	286	72	37	175	130	127	25	39	290	14	6	36	1,237	100							
Percentage																					
Extension of Code Provisions Also Cited in Complaints:																					
Constructive Discrimination	3	-	4	18	-	3	-	2	13	1	-	-	-	-	-	-	-	-	-	44	59
Association Discrimination	4	-	-	3	-	1	-	2	3	1	-	-	-	-	-	-	-	-	-	14	19
Announced Discrimination	-	-	-	-	-	-	-	2	-	-	-	-	-	-	-	-	-	-	-	2	3
Advertising	-	-	2	2	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	4	5
Application Forms	1	1	1	2	-	1	-	1	3	-	-	-	-	-	-	-	-	-	-	10	13
Employment Agencies	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Employment Plans	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	1
Total	8	1	7	25	-	5	-	7	20	2	-	-	75	100							

TABLE 5

Complaints received citing physical or mental handicaps as the prohibited ground of discrimination, comprised 27 per cent of the total complaints received in 1984/85. They totalled 438, or 51 per cent more than the 290 received in 1983/84. Increases were registered in all types of handicap cited, which were generally similar to those cited in the two previous years, since the new Code introduced handicap as a protected ground.

General diseases or disorders were cited in 136 complaints, or 31 per cent of the total, followed by multiple handicaps, at 14 per cent, sensory impairments at 13 per cent and mental handicaps (learning disability, mental retardation and mental disorder combined) at 12 per cent.

TABLE 5 - Complaints Received by Type of Handicap and Provision, 1984/85 (1983/84)

Handicap:	Provision:		1984/85		1983/84		Percentage
	Services	Accommodation	Contracts	Employment	Associations	Total	
Sensory (vision/hearing/speech/etc. impairments)	10	3	-	41	1	55	13
Respiratory (asthma/lung diseases/etc.)	-	-	-	10	-	10	2
Limbs and Digits (amputation/impairment of limb/digit/etc.)	-	3	-	47	-	50	11
Cardiovascular (heart disease/hypertension/stroke/etc.)	-	1	-	18	-	19	4
Neuromuscular (dystrophy/sclerosis/cerebral palsy/quadruplegia/etc.)	7	3	1	11	-	22	5
Neurological (epilepsy/seizures/brain injury/etc.)	5	-	-	28	1	34	8
General Diseases or Disorders (back injuries/allergies/cancer/diabetes/hernia/etc.)	12	-	-	124	-	136	31
Miscellaneous (multiple handicaps/obesity/etc.)	2	-	-	57	1	60	14
Learning Disability (dyslexia/etc.)	-	-	-	2	-	2	1
Mental Retardation (or mental impairment)	8	3	1	3	-	15	3
Mental Disorder (psychiatric illness/personality disorders/addictions/etc.)	6	2	-	27	-	35	8
Total	50	15	2	368	3	438	100
Percentage	11	3	1	84	1	100	14

TABLE 6 – Complaints Received by Sex of Complainant and Ground

Males		Females	
1983/84	1984/85	1984/85	1983/84
171	221	Race/Colour	102
50	32	Ethnic Origin	25
24	47	Creed	18
42	50	Sex	200
4	5	Sexual Harassment	125
65	82	Age	69
8	24	Marital Status	51
19	10	Family Status	29
190	269	Handicap	164
4	9	Public Assistance	25
6	3	Record of Offences	-
16	7	Reprisal	9
-	-	Breach of Settlement	1
599	759	Totals	818
49%	48%		52%
			51%

TABLE 6

Females continued to file more complaints than males and this overall difference may be due to the much greater number of complaints on grounds of sex and sexual harassment filed by females.

In complaints alleging discrimination because of handicap, race and creed, the number filed by males greatly exceeds the number filed by females.

As shown by Table 14, complaints filed by females also registered a higher rate of settlements in practically all grounds, even in those under which more complaints were filed by males.

TABLE 7 - Commission Initiated Complaints by Ground, 1984/85 (1983/84)

	<u>1984/85</u>	<u>1983/84</u>
Race/Colour	6	3
Creed	1	1
Sex	7	3
Age	1	-
Marital Status	2	-
Handicap	5	5
Total	22	12

TABLE 7

Under section 31(2) of the Code, the Commission may initiate complaints at the request of persons, or on its own initiative, where violations of the Code are apparent.

Fourteen of the complaints initiated by the Commission in 1984/85 dealt with discriminatory application forms and advertisements, where the respondents were initially resistant to comply with the Code's requirements.

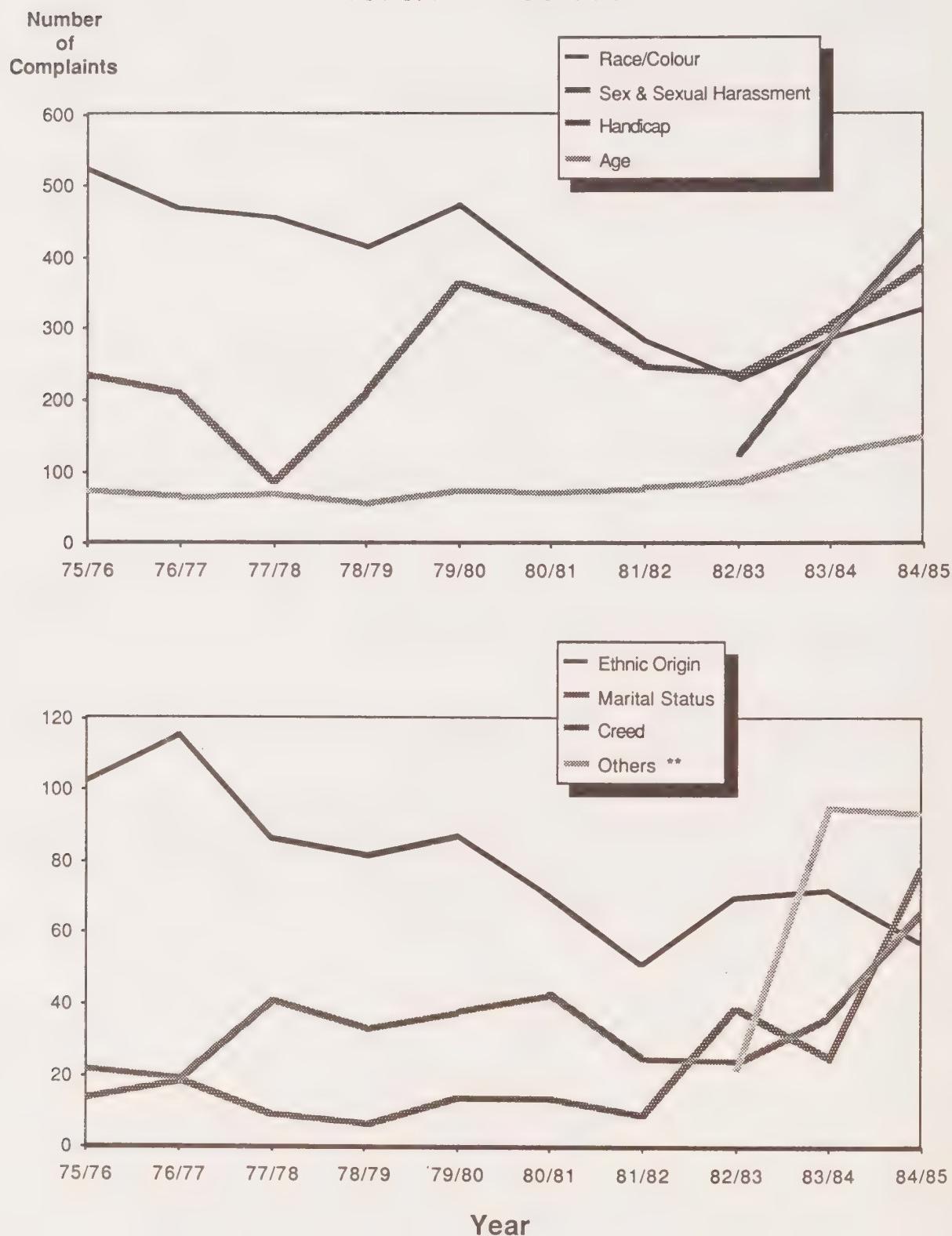
Four complaints were against taxi-cab companies operating in Hamilton and Toronto. Following media articles reporting on the respondents' willingness to comply with clients' requests not to send East Indian and Black drivers to them, the Commission initiated complaints against the companies. Three of these cases are being investigated and one has been settled.

Another situation looked into by the Commission pertains to a policy by a landlord to require single tenants to provide a co-signer for their leases, a condition not applied to couples. This matter is proceeding to a board of inquiry.

Another case is against a union, based on the results of the investigation into complaints against a Board of Education, alleging sex discrimination against blue collar females. It pertains to the union having been a party to the collective agreement which sanctioned discriminatory employment conditions and calculation of seniority. Settlement negotiations are being conducted at this point.

Cases Received by Grounds of Discrimination,

1975/76 - 1984/85



** Family Status, Record of Offences, Receipt of Public Assistance, Reprisals and Breach of Settlement.

TABLES ON COMPLAINTS CLOSED

Tables on cases closed are indicators of the types of case disposition and of the nature of settlements.

Tables 9 and 10 - Complaints Closed by Disposition and Ground 1984/85 (1983/84)

One thousand and seventy cases were disposed of in 1984/85, representing an increase of 6 per cent over the 1,012 case disposed of in 1983/84. This increase was achieved concurrently with increases in the intake of cases and in other compliance activities which absorbed considerable staff resources. (These workload increases are shown in Table 3 and 4.)

The rate of settlements in 1984/85 increased by 6 per cent to 74 per cent, from 68 per cent in 1983/84. The rates of dismissals and withdrawals decreased by 4 per cent and 2 per cent, respectively.

Settled cases refer to complaints in which the complainant, respondent and Commission have reached a satisfactory resolution of the matter in conciliation.

Withdrawn complaints are those in which the complainant has indicated that he or she does not wish to proceed with the matter.

Dismissed cases are complaints in which conciliation has not resulted in settlement, and the Commission, upon evaluating the complaint, decides that the evidence does not warrant the appointment of a board of inquiry.

The parties are given reasons in writing for the Commission's decision to dismiss a complaint and are given the opportunity to have the case reconsidered by the Commission, in light of new evidence or arguments they may wish to submit. In 1984/85 there were 65 such request for reconsideration. During the year 51 reconsiderations were completed, leading to reversals of the initial disposition in 10 cases. This compares to 66 requests in 1983/84 and 54 completions, leading to two reversals of the initial dispositions. At the end of 1984/85 there were 50 requests in process.

Caseload in Process

Nine-hundred and eighty cases in process were brought forward from 1983/84. During 1984/85, 1,599 new cases were received and 1,070 closed; the caseload in process at the end of fiscal year 1984/85 was therefore 1,507, or a 54 per cent increase.

TABLE 9 - Complaints Closed by Disposition and Ground, 1984/85

Ground:		Disposition:										Total	
		Settled		Dismissed		Withdrawn		Total		Reopened		Breach of Settlement	
		Count	%	Count	%	Count	%	Count	%	Count	%	Count	%
Race/Culture													
Ethnic Origin		137	30	21	149	77	78	40	29	193	22	2	10
Sex		64%	60%	62%	84%	81%	74%	85%	82%	70%	100%	83%	-
Creed													
Sexual Harassment		50	8	9	13	8	20	3	3	37	-	-	2
Age		23%	16%	26%	7%	8%	19%	7%	9%	14%	-	-	17%
Family Status													
Marital Status		27	12	4	16	10	8	4	3	44	-	-	-
Public Assistance		13%	24%	12%	9%	11%	7%	18%	9%	16%	-	-	-
Record of Offences													
Reprisal													
Total		214	50	34	178	95	106	47	35	274	22	2	12
1,070													

TABLE 10 - Complaints Closed by Disposition and Ground, 1983/84

Ground:		Disposition:										Record of Offences							
		Ethnic Origin		Sex		Age		Marital Status		Family Status		Handicap		Public Assistance		Reprisal		Total	
Settled	164 61%	30 76%	26 74%	136 71%	70 78%	89 65%	17 68%	13 71%	125 75%	12 50%	3 50%	5 50%	5 50%	5 50%	5 50%	5 50%	690 68%		
Dismissed	71 26%	20 34%	5 15%	25 13%	10 10%	12 11%	7 27%	4 21%	16 9%	4 25%	1 17%	1 20%	2 20%	2 20%	2 20%	2 20%	177 18%		
Withdrawn	33 13%	9 15%	3 9%	24 13%	19 19%	12 11%	2 8%	2 11%	36 20%	- -	2 33%	3 30%	3 30%	3 30%	3 30%	3 30%	145 14%		
Total	268	59	34	185	99	113	26	19	177	16	6	10	1,012						

TABLES 11 and 12 – Settlements Effected by Ground, 1984/85 (1983/84)

Monetary compensation in 1984/85 reached a total of \$593,088 for 272 complainants, or 35 per cent of all complaints settled, as compared to a total of \$865,189 for 326 complainants, or 47 per cent of all complaints settled, in 1983/84.

Complainants receiving offers of a job or facility numbered 198 in 1984/85, marking an increase over the 158 such offers in the previous year.

TABLE 11 - Settlements Effected by Ground, 1984/85

Settlement:	Number of Complainants Who Received Damages	Specific and General Damages	Offer of Job or Facility for Next Job or Facility	Offer of or Consideration for Next Job or Facility	Affirmative Action Implemented	Seminars With Respondent Staff	Review of Practices, Policies or Documents	Issue or Correction of References	Letter of Apology to Complainant	Written Declaration of Management Policies
Ground:										
Race/Colour	\$105,727 (46)	42	20	1	9	26	24	24	24	49
Ethnic Origin	14,109 (12)	6	7	-	2	7	-	1	1	9
Creed	18,594 (7)	5	-	-	1	7	3	3	3	7
Sex	127,052 (68)	29	19	4	13	54	17	20	20	75
Sexual Harassment	100,627 (52)	8	3	1	4	9	22	19	19	37
Age	34,824 (16)	24	18	1	9	20	4	4	4	31
Marital Status	4,144 (5)	10	8	-	1	10	1	1	1	7
Family Status	5,750 (8)	5	9	-	2	7	4	3	3	13
Handicap	99,174 (53)	60	33	-	5	30	23	22	22	61
Receipt of Public Assistance	500 (1)	8	7	-	5	-	1	1	1	8
Record of Offences	140 (1)	-	1	-	-	-	-	-	2	1
Reprisal	82,447 (3)	1	-	-	-	-	-	-	1	1
Total	\$593,088 (272)	198	125	7	46	175	100	99	99	299

TABLE 12 - Settlements Effected by Ground, 1983/84

Settlement:	Ground:	Number of Complaintants Who Received Damages	Offer of or Consideration for Next Job or Facility	Affirmative Action Implemented	Seminars With Respondent Staff	Review of Practices, Policies or Documents	Issueance or Correction of References	Letter of Apology to Complainant	Written Declaration of Management Policies
Race/Colour	\$98,204	(65)	33	25	8	22	56	16	33
Ethnic Origin	7,085	(7)	3	7	1	2	8	3	3
Creed	39,570	(10)	6	4	-	3	5	3	6
Sex	174,811	(75)	31	21	10	17	33	16	22
Sexual Harassment	71,271	(55)	8	7	-	10	18	26	28
Age	370,973	(50)	18	15	-	9	31	8	13
Marital Status	2,606	(4)	4	4	-	2	11	3	7
Family Status	2,176	(6)	5	3	-	1	3	1	5
Handicap	88,942	(48)	45	50	-	9	55	27	33
Receipt of Public Assistance	550	(2)	3	4	-	1	4	1	2
Record of Offences	1,400	(2)	1	-	-	-	-	1	-
Reprisal	7,601	(2)	-	-	-	-	-	2	-
Total	\$865,189	(326)	158	140	19	76	224	107	152
									303

TABLE 13 - Complaints Closed by Disposition, Ground and Provision, 1984/85

One thousand and seventy cases were disposed of in 1984/85. This table shows a distribution of the closed cases according to the social areas where the situations complained of occurred, in correlation with the type of disposition.

Cases dealing with accommodation (purchase and rental of housing and commercial units, terms and conditions of leases, etc.) registered the highest rate of settlements, at 82 per cent, followed by employment cases at 74 per cent, services cases at 64 per cent and cases in the other four social areas combined, at 62 per cent.

Table 13 - Complaints Closed by Disposition, Ground and Provision, 1984/85

TABLE 14 - Complaints Closed by Disposition, Sex of Complainant and Ground, 1984/85

	Males			Females		
	Withdrawn Nos.	Dismissed Nos. %	Settled Nos. %	Total Nos.	Settled Nos. %	Dismissed Nos. %
14	11	36	29	76	60	126
5	17	7	23	18	60	30
4	20	6	30	10	50	20
4	12	3	9	26	79	20
4	12	3	9	26	79	33
1	25	1	25	2	50	4
5	9	14	24	39	67	58
1	9	2	18	8	73	11
1	8	3	25	8	67	12
28	17	27	16	109	67	164
-	-	-	-	4	100	4
-	-	-	-	2	100	2
-	-	2	40	3	60	5
-	-	-	-	-	-	-
63	-	101	-	307	-	471
13%	-	22%	-	65%	-	100%
					Percentage	
					Total *	584
						468
						53
						63
						-
						9%
						-
						11%
						-

* The difference between the totals on this table and on Table 9 represents the Commission-initiated complaints closed this year.

TABLE 14

Complaints filed by females registered an average settlement rate of 80% against 65% by males, a clear confirmation of the pattern noticed last year when the respective averages were 75% and 63%.

TABLE 15 (Employment) Complaints Closed by Disposition, Type of Employment and Ground, 1984/85

Seven hundred and seven cases dealing with employment situations under Section 4 of the Code were closed in 1984/85. This Table details the types of employment situations giving rise to the complaints.

Complaints involving termination of employment continued to be the highest at 350, or 50 per cent, followed by recruitment and hiring at 203, or 29 per cent, and problems during employment (such as promotions, transfers, general terms and conditions, etc.) at 154, or 22 per cent.

Complaints involving recruitment and hiring were settled more often than the other types. They registered a settlement rate of 81 per cent against 70 per cent for terminations and 67 per cent for problems during employment.

TABLE 15 - (Employment) Complaints Closed by Disposition, Type of Employment and Ground, 1984/85

Type of Disposition:	Race/Colour		Ethnic Origin		Religion		Age		Handicap		Others*		TOTAL
	Black	Asian	White	Native Indian	East Indian	Asian	White	Black	Asian	White	Native Indian	East Indian	
Settled	16	3	2	2	1	24	10	4	45	28	38	16	165
Dismissed	2	1	1	-	-	4	2	1	1	5	3	2	18
Withdrawn	3	-	-	1	-	4	2	-	2	4	6	2	20
Sub-Total	21	4	3	3	1	32	14	5	48	37	47	20	203
Percentage	10	2	2	2	-	16	7	2	24	18	23	10	100
RECRUITMENT AND HIRING													
Settled	19	17	1	2	1	40	11	7	57	28	90	11	244
Dismissed	15	6	3	1	-	25	3	3	4	6	22	1	64
Withdrawn	4	2	1	-	2	9	4	1	7	2	19	-	42
Sub-Total	38	25	5	3	3	74	18	11	68	36	131	12	350
Percentage	11	7	1	1	1	21	5	3	20	10	38	3	100
TERMINATION													
Settled	16	3	3	3	1	26	-	10	20	8	36	3	103
Dismissed	3	2	2	-	1	8	2	3	7	2	4	-	26
Withdrawn	4	1	1	-	-	6	3	1	5	2	6	2	25
Sub-Total	23	6	6	3	2	40	5	14	32	12	46	5	154
Percentage	15	4	4	2	1	26	3	9	21	8	30	3	100
DURING EMPLOYMENT													
Total	82	35	14	9	6	146	37	30	148	85	224	37	707
Percentage	12	5	2	1	1*	21	4	4	21	12	32	5	100

* Marital status; family status; record of offences and reprisal

TABLE 16 - (Employment) Complaints Closed by Type of Work and Ground, 1984/85

Type of Work:	Ground:		Sex		Age		Handicap		Others *		TOTAL		Percentage
	Race/Colour	Ethnic Origin	Creed	Sexual Harassment	Age	Handicap	Others	TOTAL					
Professional/ Managerial/Technical	24	11	11	18	7	10	23	6	110	14			
Sales	8	2	2	22	7	13	20	5	79	10			
Clerical	18	3	4	27	20	14	30	13	129	16			
Crafts and Foremen/Women	14	5	3	3	2	8	15	2	52	6			
Operatives	23	4	3	12	4	3	34	2	85	11			
Services	28	5	6	32	40	25	48	4	188	24			
Labour/General	31	7	1	34	9	12	54	5	153	19			
Total	146	37	30	148	89	85	224	37	796	100			

* Marital status, family status, record of offences and reprisal

TABLE 16

"Type of Work" denotes the occupational categories of complainants. Complaints in the services categories registered the highest number, while crafts and foremen/women registered the lowest.

TABLE 17 - Cases Closed by Respondent's Type of Industry and Ground, 1984/85

This table correlates the grounds of complaints to the type of industry in which the situation complained of occurred.

The type of industry in which the highest percentage of complaints occurred was Community, Business and Personal Services, with 382 cases or 36 per cent of the total. The largest sub-category within this group and the largest industry overall was Hotels/Restaurants/Taverns with 127 complaints.

Manufacturing was the second largest type of industry against which complaints were filed, with 262 cases, or 25 per cent of the total.

The Construction and Natural Resources industries were named in the lowest percentages of cases, with only 10 and 6 cases, respectively.

The distribution of types of industry by each ground follows the general patterns described above: that is, for each ground, the highest and lowest percentages of cases per industry category are the same as for the total cases.

TABLE 17 - Cases Closed by Respondent's Type of Industry and Ground, 1984/85

Type of Industry:	Race/Colour		Ground:		SEXUAL HARASSMENT	HANDICAP	OTHER *	TOTALS
	Black	White	Native Indian	Asian				
NATURAL RESOURCES	-	1	-	-	1	1	-	10
MANUFACTURING	-	-	-	-	11	2	5	21
Metals/Parts/Machinery	5	6	-	-	1	1	7	2
Food/Tabacco	2	-	-	-	2	1	1	23
Wood/Furniture/Paper	1	1	-	-	6	3	12	30
Automotive/Aircraft	2	2	-	2	1	1	22	47
Electrical	1	4	-	1	6	2	1	3
Others	11	1	3	2	19	5	3	29
Sub-total	22	14	3	5	47	14	57	180
CONSTRUCTION	2	-	-	-	2	-	1	6
TRANSPORTATION/COMMUNICATIONS/UTILITIES	11	1	-	1	14	2	1	18
TRADE AND RETAIL	9	5	3	1	18	2	3	41
FINANCE, INSURANCE, REAL ESTATE	9	3	2	3	42	12	3	7
COMMUNITY/BUSINESS/PERSONAL SERVICES	25	9	3	2	10	3	14	123
Schools/COLLEGES/UNIVERSITY	7	2	-	1	-	10	2	2
Hospitals/Physicians	13	1	1	-	15	1	11	38
Employment Agencies	1	-	-	-	1	5	-	7
Hotels/Restaurants	10	3	2	5	20	1	27	69
Building Services	5	2	-	-	7	2	4	1
Other	13	3	3	3	23	5	22	9
Sub-total	49	11	6	9	76	17	19	127
PUBLIC ADMINISTRATION	6	5	1	2	15	2	1	5
TOTAL	124	46	17	18	215	50	34	1070

TABLE 18 - Boards of Inquiry Appointed and Completed, 1984/85 (1983/84)

	1984/85		1983/84	
Boards Appointed	41	(56) *	33	(60) *
Boards Completed:	17	(20)	28	(44)
Pre-hearing Settlements	7	(9)	13	(18)
Decisions for Complainant	6	(7)	7	(15)
Decisions for Respondent	4	(4)	7	(10)
Complaints Withdrawn	-		1	(1)
Board Decisions Under Appeal	7	(10)	6	(14)
Court Decisions - For Complainant	1	(6)		
Boards Incomplete (from all years)	62	(98)	32	(61)

* Number of complainants involved

TABLE 18

Forty-one boards were appointed in 1984/85, an increase of 24 per cent over 1983/84.

Of the boards completed, the majority continued to be settled by the parties, before or during the hearing, rendering a decision by the Board unnecessary. Of the ten hearings that came to a conclusion, six Boards made findings of discrimination and imposed settlements in favour of the complainants and four dismissed the allegations as unsubstantiated.

TABLE 19 - Inquiries, Voluntary Compliance And Public Education, 1984/85 (1983/84)

	1984/85	1983/84
	Compliance Total	Compliance Total
Inquiries	51,779	41,491
Referrals	14,345	10,272
Informal Resolutions	134	346
Application Form Reviews	741	745
Advertising Reviews	275	255
Exemptions	89	68
Public Education Activities	618	739
Publications Distributed	368,435	342,723

TABLE 19

Major increases were registered in public inquiries, referrals and distribution of Commission's publications of, respectively, 25 per cent, 40 per cent and 8 per cent over the totals in 1983/84.

TABLE 20 - Closed Race Relations Cases, Consultations and Public Education Activities by Sector, 1984/85 (1983/84)

Definition of Activities

Mediations:

Cases in which the Division endeavours to diffuse specific racial and ethnic tensions or conflicts at the community and institutional levels by mediating between parties in conflict.

Projects:

Cases in which the Division participates at the community or institutional level in the development or implementation of specific programmes or policies designed to improve race relations.

Consultations:

Occasions when the Division provides information and advice on race relations issues to individuals and organizations as requested.

Public Education Activities:

Activities the Division organizes or participates in that are designed to heighten public awareness of race related issues and/or the role and mandate of the Race Relations Division and the Ontario Human Rights Commission.

Public Education Projects:

Cases in which the Division designs and delivers race relations training programs to community organizations or institutions in order to heighten awareness to various race related issues.

Increase in Consultations

Consultations increased by 312 or 64 per cent in 1984/85, over the total in 1983/84. This is attributable to greater emphasis being placed on communicating with more institutions and community organizations in order to encourage wider community development in the area of race relations.

Other Work

The Division also carried out 5 research projects, handled 2,074 public inquiries/referrals and distributed 12,206 copies of its publications.

TABLE 20 - Closed Race Relations Cases, Consultations and Public Education Activities by Sector, 1984/85 (1983/84)

Sector:	1984/85		1983/84	
	Cases	Consultations	Cases	Consultations
Community Relations	41	1	0	18
Media	17	0	1	15
Projects	28	3	3	40
Public Education	17	8	9	124
Unions	3	8	2	44
The Workplace	0	2	0	6
Health/Social Services	14	0	0	15
Community Organizations	1	2	0	16
Religious Institutions	16	12	5	398
Government	4	0	0	7
Community at Large	5	9	0	76
Total	2	6	1	42
Neighbourhood Relations	17	0	1	13
Public Services/Facilities	28	3	3	38
Criminal Justice System	17	8	9	16
Educational Institutions	3	8	2	8
Unions	0	2	0	0
Media	14	0	0	59
Projects	1	2	0	4
Public Education	16	12	5	203
Unions	1	2	0	16
Health/Social Services	16	12	5	398
Community Organizations	4	0	0	7
Religious Institutions	5	9	0	76
Government	2	6	1	42
Community at Large	-	-	-	35
Total	148	51	21	801
Activities	36	5	*	15
Public Education	13	1	10	*
Consultations	38	9	33	33
Projects	16	7	71	71
Public Education	8	2	15	15
Community Relations	1	-	10	10
Media	16	1	10	10
Projects	2	5	15	15
Public Education	17	16	229	229
Community Relations	1	-	10	10
Media	8	13	47	47
Consultations	1	7	24	24
Activities	448	157	66	489

* Previously reported as part of the overall totals for the Commission.

ONTARIO HUMAN RIGHTS COMMISSION STAFF*

at March 31, 1985

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Shaw, Marian
Silberman, Toni
Wood, Glenda

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DaSilva, Mike
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Guttentag, Gail
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Whist, Eric
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Legault, Therese
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Witter, Merv

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Fratesi, Debra
Lapalme, Gilles
Mitchell, Irene
St.-Onge, Jo-Anne
Welch, Dan

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Barnes, Dorothy
Burns, Walter
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Mutimer, Connie
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Dewe, David
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Kerna, Gloria
Mankikar, Ann
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CODE DES DROITS DE LA PERSONNE



PRÉAMBULE

CONSIDÉRANT que la reconnaissance de la dignité inhérente à tous les membres de la famille humaine et de leurs droits égaux et inaliénables constitue le fondement de la liberté, de la justice et de la paix dans le monde et est conforme à la Déclaration universelle des droits de l'homme proclamée par les Nations unies;

CONSIDÉRANT que l'Ontario a pour principe de reconnaître la dignité et la valeur de la personne et d'assurer à tous les mêmes droits et avantages, sans discrimination contraire à la loi, et qu'elle vise à créer un climat de compréhension et de respect mutuel de la dignité et de la valeur de la personne de façon que chacun s'estime partie intégrante de la collectivité et apte à contribuer pleinement à l'avancement et au bien-être de son milieu et de sa province;

ET CONSIDÉRANT que ces principes sont confirmés en Ontario par un certain nombre de lois et qu'il est opportun de réviser et d'accroître la protection des droits de la personne en Ontario;

PREMIER MINISTRE

MINISTRE DU TRAVAIL

PRESIDENT,
COMMISSION ONTARIENNE DES DROITS DE LA PERSONNE

Pour ces motifs, Sa Majesté, de l'avis et du consentement de l'Assemblée législative de la province de l'Ontario, décrète ce qui suit:

1 La personne a droit à un traitement égal en matière de services, de biens ou d'installations, sans discrimination fondée sur la race, l'ascendance, le lieu d'origine, la couleur, l'origine ethnique, la citoyenneté, la croyance, le sexe, l'âge, l'état matrimonial, l'état familial ou une infirmité. 1981, chap. 53, art. 1.

2 (1) La personne a droit à un traitement égal en matière d'occupation d'un logement, sans discrimination fondée sur la race, l'ascendance, le lieu d'origine, la couleur, l'origine ethnique, la citoyenneté, la croyance, le sexe, l'âge, l'état matrimonial, l'état familial, l'état d'assisted social ou une infirmité.

(2) L'occupant d'un logement a le droit de vivre sans être harcelé par le propriétaire ou son représentant ou un occupant du même immeuble pour des raisons fondées sur la race, l'ascendance, le lieu d'origine, la couleur, l'origine ethnique, la citoyenneté, la croyance, l'âge, l'état matrimonial, l'état familial, l'état d'assisted social ou une infirmité. 1981, chap. 53, art. 2.

3 La personne pourvue de capacité juridique a le droit de passer un contrat à titre de partenaire égal, sans discrimination fondée sur la race, l'ascendance, le lieu d'origine, la couleur, l'origine ethnique, la citoyenneté, la croyance, le sexe, l'âge, l'état matrimonial, l'état familial ou une infirmité. 1981, chap. 53, art. 3.

4 (1) La personne a droit à un traitement égal en matière d'un emploi, sans discrimination fondée sur la race, l'ascendance, le lieu d'origine, la couleur, l'origine ethnique, la citoyenneté, la croyance, le sexe, l'âge, l'existence d'un casier judiciaire, l'état matrimonial, l'état familial ou une infirmité.

(2) L'employé a le droit de travailler sans être harcelé au travail par son employeur ou son représentant ou un autre employé pour des raisons fondées sur la race, l'ascendance, le lieu d'origine, la couleur, l'origine ethnique, la citoyenneté, la croyance, l'âge, l'existence d'un casier judiciaire, l'état matrimonial, l'état familial ou une infirmité. 1981, chap. 53, art. 4.

5 La personne a droit à un traitement égal en matière d'adhésion à un syndicat ou à une association commerciale ou professionnelle ou en matière d'exercice d'une profession autonome, sans discrimination fondée sur la race, l'ascendance, le lieu d'origine, la couleur, l'origine ethnique, la citoyenneté, la croyance, le sexe, l'âge, l'état matrimonial, l'état familial ou une infirmité. 1981, chap. 53, art. 5.

6 (1) L'occupant d'un logement a le droit de vivre sans être harcelé par le propriétaire ou son représentant ou un occupant du même immeuble pour des raisons fondées sur le sexe.

(2) L'employé a le droit de travailler sans être harcelé à son travail par son employeur ou son représentant ou un autre employé pour des raisons fondées sur le sexe.

(3) La personne a le droit d'être à l'abri:

a) d'avances sexuelles provenant d'une personne apte à lui accorder ou à lui refuser un avantage ou une promotion lorsque la personne qui fait les avances sait ou devrait normalement savoir que celles-ci sont importunes;

b) de représailles ou de menaces de représailles pour avoir refusé d'accéder à des avances sexuelles lorsque ces représailles ou menaces proviennent d'une personne apte à lui accorder ou à lui refuser un avantage ou une promotion. 1981, chap. 53, art. 6.

7 La personne a le droit de revendiquer et de faire respecter les droits qui lui sont reconnus par la présente loi, d'introduire des instances aux termes de la présente loi et d'y participer, et de refuser d'enfreindre un droit reconnu à une autre personne par la présente loi sans représailles ou menaces de représailles. 1981, chap. 53, art. 7.

8 Il est interdit d'enfreindre un droit reconnu par la présente partie ou de causer, directement ou indirectement, l'infraction d'un tel droit. 1981, chap. 53, art. 8.

AUG 26 1987

